
COMMONWEALTH of VIRGINIA

Stormwater Management Act

Virginia Stormwater Management Program
(VSMP) Regulation

General VPDES Permit for Discharges of
Stormwater from Construction Activities
Regulation

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Stormwater Management Act

TITLE 62.1 CHAPTER 3.1 ARTICLE 2.3

NOTE: This copy of the act is up-to-date as of August 5, 2019. The most recent version of the act can be found on the Virginia General Assembly's Legislative Information System website:

<https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/>

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§ 62.1-44.15:24. Definitions.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c.345)

As used in this article, unless the context requires a different meaning:

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation provisions of this chapter.

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-483, and P.L. 97-117, or any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations,

and this article and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP general permit coverage has been provided where applicable.

"Permittee" means the person to which the permit or state permit is issued.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

"State permit" means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the Board for stormwater discharges from an MS4. Under these permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations and this article and its attendant regulations.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater management plan" means a document containing material describing methods for complying with the requirements of a VSMP.

"Subdivision" means the same as defined in § 15.2-2201.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management Program or the Department. An authority may include a locality; state entity, including the Department; federal entity; or, for linear projects subject to annual standards and specifications in

accordance with subsection B of § 62.1-44.15:31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

§ 62.1-44.15:25. Further powers and duties of the State Water Control Board.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c.345)

In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. The Board may issue, deny, revoke, terminate, or amend state stormwater individual permits or coverage issued under state general permits; adopt regulations; approve and periodically review Virginia Stormwater Management Programs and management programs developed in conjunction with a state municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety, and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. The Board may:

1. Issue, deny, amend, revoke, terminate, and enforce state permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems and land-disturbing activities.
2. Take administrative and legal actions to ensure compliance with the provisions of this article by any person subject to state or VSMP authority permit requirements under this article, and those entities with an approved Virginia Stormwater Management Program and management programs developed in conjunction with a state municipal separate storm sewer system permit, including the proper enforcement and implementation of, and continual compliance with, this article.
3. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), amend or revoke any state permit issued under this article on the following grounds or for good cause as may be provided by the regulations of the Board:
 - a. Any person subject to state permit requirements under this article has violated or failed, neglected, or refused to obey any order or regulation of the Board, any order, notice, or requirement of the Department, any condition of a state permit, any provision of this article, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations, including the disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

b. Any person subject to state permit requirements under this article has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a state permit, or in any other report or document required under this law or under the regulations of the Board;

c. The activity for which the state permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or

d. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

4. Cause investigations and inspections to ensure compliance with any state or VSMP authority permits, conditions, policies, rules, regulations, rulings, and orders which it may adopt, issue, or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.

5. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), adopt rules governing (i) hearings, (ii) the filing of reports, (iii) the issuance of permits and special orders, and (iv) all other matters relating to procedure, and amend or cancel any rule adopted.

6. Issue special orders to any person subject to state or VSMP authority permit requirements under this article (i) who is permitting or causing the unreasonable degradation of properties, water quality, stream channels, and other natural resources to cease and desist from such activities; (ii) who has failed to construct facilities in accordance with final approved plans and specifications to construct such facilities; (iii) who has violated the terms and provisions of a state or VSMP authority permit issued by the Board or VSMP authority to comply with the provisions of the state or VSMP authority permit, this article, and any decision of the VSMP authority, the Department, or the Board; or (iv) who has violated the terms of an order issued by the court, the VSMP authority, the Department, or the Board to comply with the terms of such order, and also to issue orders to require any person subject to state or VSMP authority permit requirements under this article to comply with the provisions of this article and any decision of the Board.

Such special orders are to be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.) and shall become effective not less than 15 days after the date of mailing with confirmation of delivery of the notice to the last known address of any person subject to state or VSMP authority permit requirements under this article, provided that if the Board finds that any such person subject to state or VSMP authority permit requirements under this article is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety, or welfare or the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing any person subject to state or VSMP authority permit requirements under this article to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to any person subject to state or VSMP authority permit requirements under this article, to affirm, modify, amend, or cancel such emergency special order. If any person subject to state or VSMP authority permit requirements under this article who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.15:48, and where the order is based on a finding of an imminent and substantial danger,

the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the recipient of the order may appeal its issuance to the circuit court of the jurisdiction wherein the discharge was alleged to have occurred.

The provisions of this section notwithstanding, the Board may proceed directly under § 62.144.15:48 for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

With the consent of any person subject to state or VSMP authority permit requirements under this article who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VSMP authority, any condition of a state or VSMP authority permit, or any provision of this article, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for violations in specific sums not to exceed the limit specified in subsection A of § 62.1-44.15:48. Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § 62.1-44.15:48 and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29.

§ 62.1-44.15:26. State permits.

(For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. All state permits issued by the Board under this article shall have fixed terms. The term of a state permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed five years. The term of a permit issued by the Board shall not be extended by modification beyond the maximum duration and the permit shall expire at the end of the term unless it is administratively continued in accordance with Board regulations.

B. State individual construction permits shall be administered by the Department.

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§ 62.1-44.15:26.1. Termination of Construction General Permit coverage.

A. A VSMP authority shall recommend that the Department of Environmental Quality terminate coverage under a General Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) within 60 days of receiving a complete notice of termination from the operator of the construction activity.

B. Coverage under a Construction General Permit shall be deemed to be terminated 90 days after the receipt by the VSMP authority of a complete notice of termination from the operator of the construction activity.

C. If a VSMP authority receives a notice of termination of a Construction General Permit that it determines to be incomplete, the VSMP authority shall, within a reasonable time, inform the operator of the construction activity of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice.

§ 62.1-44.15:27. Establishment of Virginia Stormwater Management Programs.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. Any locality that operates a regulated MS4 or that notifies the Department of its decision to participate in the establishment of a VSMP shall be required to adopt a VSMP for land-disturbing activities consistent with the provisions of this article according to a schedule set by the Department. Such schedule shall require implementation no later than July 1, 2014. Thereafter, the Department shall provide an annual schedule by which localities can submit applications to implement a VSMP. Localities subject to this subsection are authorized to coordinate plan review and inspections with other entities in accordance with subsection H.

The Department shall operate a VSMP on behalf of any locality that does not operate a regulated MS4 and that does not notify the Department, according to a schedule set by the Department, of its decision to participate in the establishment of a VSMP. A locality that decides not to establish a VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.). A locality that is subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) also shall adopt requirements set forth in this article and attendant regulations as required to regulate Chesapeake Bay Preservation Act land-disturbing activities in accordance with § 62.1-44.15:28. To comply with the water quantity technical criteria set forth in this article and attendant regulations, a rural Tidewater locality may adopt a tiered approach to water quantity management for Chesapeake Bay Preservation Act land-disturbing activities pursuant to § 62.1-44.15:27.2.

Notwithstanding any other provision of this subsection, any county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect, on a schedule set by the Department, to defer the implementation of the county's VSMP until no later than January 1, 2015. During this deferral period, when such county thus lacks the legal authority to operate a VSMP, the Department shall operate a VSMP on behalf of the county and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls. Any such county electing to defer the establishment of its VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.).

B. Any town, including a town that operates a regulated MS4, lying within a county that has adopted a VSMP in accordance with subsection A may decide, but shall not be required, to become subject to the county's VSMP. Any town lying within a county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect to become subject to the county's VSMP according to the deferred schedule established in subsection A. During the county's deferral period, the Department shall operate a VSMP on behalf of the town and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls for the town as provided in subsection A. If a town lies within the boundaries of more than one county, the town shall be considered to be wholly within the county in which the larger portion of the town lies. Towns shall inform the Department of their decision according to a schedule established by the Department. Thereafter, the Department shall provide an annual schedule by which towns can submit applications to adopt a VSMP.

C. In support of VSMP authorities, the Department shall:

1. Provide assistance grants to localities not currently operating a local stormwater management program to help the localities to establish their VSMP.

2. Provide technical assistance and training.

3. Provide qualified services in specified geographic areas to a VSMP to assist localities in the administration of components of their programs. The Department shall actively assist localities in the establishment of their programs and in the selection of a contractor or other entity that may provide support to the locality or regional support to several localities.

D. The Department shall develop a model ordinance for establishing a VSMP consistent with this article and its associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

E. Each locality that administers an approved VSMP shall, by ordinance, establish a VSMP that shall be administered in conjunction with a local MS4 program and a local erosion and sediment control program if required pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), and which shall include the following:

1. Consistency with regulations adopted in accordance with provisions of this article;

2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and

3. Provisions for the integration of the VSMP with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

F. The Board may approve a state entity, including the Department, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 to operate a Virginia Stormwater Management Program consistent with the requirements of this article and its associated regulations and the VSMP authority's Department-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

G. The Board shall approve a VSMP when it deems a program consistent with this article and associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

H. A VSMP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to carry out or assist with the responsibilities of this article. A VSMP authority may enter into contracts with third-party professionals who hold certificates of competence in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30, to carry out any or all of the responsibilities that this article requires of a VSMP authority, including plan review and inspection but not including enforcement.

I. If a locality establishes a VSMP, it shall issue a consolidated stormwater management and erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.). When available in accordance with subsection J, such permit, where

applicable, shall also include a copy of or reference to state VSMP permit coverage authorization to discharge.

J. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance.

K. Any VSMP adopted pursuant to and consistent with this article shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and attendant regulations, and effective July 1, 2014, shall not be subject to local program review under the stormwater management provisions of the Chesapeake Bay Preservation Act.

L. All VSMP authorities shall comply with the provisions of this article and the stormwater management provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and related regulations. The VSMP authority responsible for regulating the land-disturbing activity shall require compliance with the issued permit, permit conditions, and plan specifications. The state shall enforce state permits.

§ 62.1-44.15:27.2. Rural Tidewater localities; water quantity technical criteria; tiered approach.

A. For determining the water quantity technical criteria applicable to a land disturbance equal to or greater than 2,500 square feet but less than one acre, any rural Tidewater locality may elect to use certain tiered water quantity control standards based on the percentage of impervious cover in the watershed as provided in this section. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the Department. The Board shall adopt regulations to carry out provisions of this section.

B. 1. The local governing body shall make, or cause to be made, a watershed map showing the boundaries of the locality. The governing body shall use the most recent version of Virginia's 6th order National Watershed Boundary Dataset to show the boundaries of each watershed located partially or wholly within the locality. The map shall indicate the percentage of impervious cover within each watershed. Data provided by the Virginia Geographic Information Network (VGIN) shall be sufficient for the initial determination of impervious cover percentage at the time of the initial adoption of the map.

2. The watershed map also shall show locations at which the governing body expects or proposes that development should occur and may indicate the projected future percentage of impervious cover based on proposed development. The governing body may designate certain areas within a watershed in which it proposes that denser-than-average development shall occur and may designate environmentally sensitive areas in which the energy balance method for water quantity management, as set forth in the regulations adopted by the Board pursuant to this article, shall apply.

3. After the watershed map has been made, the governing body may then approve and adopt the map by a majority vote of its membership and publish it as the official watershed map of the locality. No official watershed map shall be adopted by the governing body or have any effect until it is approved by an ordinance duly passed by the governing body of the locality after a public hearing, preceded by public notice as required by § 15.2-2204. Within 30 days after adoption of the official watershed map, the governing body shall cause the map to be filed in the office of the clerk of the circuit court.

4. At least once each year, the local governing body shall by majority vote make additions to or modifications of the official watershed map to reflect actual development projects. The governing body shall change the indication on the map of the impervious cover percentage within a watershed where the percentage has changed and shall update the map and supporting datasets with actual development project information, including single-family housing projects and any projects covered by the General Permit for Discharges of Stormwater from Construction Activities and administered by the Department for opt-out localities pursuant to § 62.1-44.15:27 . The governing body may incorporate into the official watershed map the most recent VGIN data, including data on state and federal projects that are not reviewed or approved by the locality. The governing body shall keep current its impervious cover percentage for each watershed located within the locality, as reflected in the official watershed map, and shall make the map and such percentages available to the public.

5. The locality shall notify the Department and update the official map within 12 months of the approval of the development plan for any project that exceeds the impervious cover percentage of the watershed in which it is located and causes the percentage for that watershed to rise such that the watershed steps up to the next higher tier pursuant to subsection C.

6. No official watershed map or its adopting or amending ordinances shall take precedence over any duly adopted zoning ordinance, comprehensive plan, or other local land-use ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield to such land-use ordinance.

C. When the locality evaluates any development project in a watershed that is depicted on the official watershed map as having an impervious cover percentage of:

1. Less than five percent, the locality shall apply the regulatory minimum standards and criteria adopted by the Board pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) and in effect prior to July 1, 2014, for the protection of downstream properties and waterways from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration.

2. Five percent or more but less than 7.5 percent, the locality shall require practices designed to detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm, which practices shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

3. Seven and one-half percent or more, the locality shall apply the energy balance method as set forth in regulations adopted by the Board.

D. The locality shall require that any project whose construction would cause the impervious cover percentage of the watershed in which it is located to rise, such that the watershed steps up to the next higher tier, shall meet the current water quantity technical criteria using the energy balance method or a more stringent alternative.

§ 62.1-44.15:27.3. Acceptance of signed and sealed plan in lieu of local plan review.

A. Any rural Tidewater locality, whether or not it administers a VSMP or VESCP pursuant to § 62.1-44.15:27, may require that a licensed professional retained by the applicant prepare and submit a set of plans and supporting calculations for a land-disturbing activity of 2,500 square feet or more but less than one acre in extent.

B. Such professional shall be licensed to engage in practice in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 and shall hold a certificate of competence in the appropriate subject area, as provided in § 62.1-44.15:30.

C. Such plans and supporting calculations shall be appropriately signed and sealed by the professional with a certification that states: "This plan is designed in accordance with applicable state law and regulations."

D. The rural Tidewater locality is authorized to accept such signed and sealed plans in satisfaction of the requirement of this article that, for a land-disturbing activity of 2,500 square feet or more but less than one acre in extent, it retain a local certified plan reviewer or conduct a local plan review. This section shall not excuse any applicable performance bond requirement pursuant to § 62.1-44.15:34 or 62.1-44.15:57.

§ 62.1-44.15:28. Development of regulations.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

1. Establish standards and procedures for administering a VSMP;
2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods
3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;
5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed by the following:
 - a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State

Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP authority.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP authority portion of the statewide permit fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale.

f. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

6. Establish statewide standards for stormwater management from land-disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;

7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;
8. Notwithstanding the provisions of subdivision A 5, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;
9. Provide for reciprocity with programs in other states for the certification of proprietary best management practices;
10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;
11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;
12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;
13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer administration of the VSMP to the Department;
14. Establish a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits;
15. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control technologies that may prove effective in reducing nonpoint source pollution; and
16. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth.

Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

B. The Board may integrate and consolidate components of the regulations implementing the Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit program or repeal components so that these programs may be implemented in a consolidated manner that provides greater consistency, understanding, and efficiency for those regulated by and administering a VSMP.

§ 62.1-44.15:28.1. Pollutant removal by dredging.

Upon approval by the Chesapeake Bay Program as a creditable practice for pollutant removal, the Board shall establish a procedure for the approval of dredging operations in the Chesapeake Bay Watershed as a method of meeting pollutant reduction and loading requirements. The dredging operation and disposal of dredged material shall be conducted in compliance with all applicable local, state, and federal laws and regulations. Any locality imposing a fee relating to stormwater pursuant to § 15.2-2114 may make funds available for stormwater maintenance dredging, including at the point of discharge, where stormwater has contributed to the deposition of sediment in state waters.

§ 62.1-44.15:29. Virginia Stormwater Management Fund established.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected by the Department pursuant to §§ 62.1-44.15:28, 62.1-44.15:38, and 62.1-44.15:71 and all civil penalties collected pursuant to § 62.1-44.19:22 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller.

§ 62.1-44.15:29.2. Stormwater Local Assistance Fund, estimate of requests.

The Department, in consultation with stakeholders, including representatives of the Virginia Municipal Stormwater Association, local governments, and conservation organizations, shall annually determine an estimate of the amount of stormwater local assistance matching grants expected to be requested by local governments for projects that are related to planning, designing, and implementing stormwater best management practices and are eligible for funding. The Department shall include such estimate in (i) the biennial funding report that is submitted to the Governor pursuant to the provisions of § 2.2-1504 and (ii) the annual progress report on the impaired waters clean-up plan that is submitted to legislative committees pursuant to the provisions of § 62.1-44.118.

§ 62.1-44.15:30. Education and training programs.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. The Board shall issue certificates of competence concerning the content and application of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of VSMP authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge to the satisfaction of the Board. As part of education and training programs authorized pursuant to subsection E of § 62.1-44.15:52, the Department shall develop or certify expanded components to address program administration, plan review, and project inspection elements of this article and attendant regulations. Reasonable fees to cover the costs of these additional components may be charged.

B. Effective July 1, 2014, personnel of VSMP authorities reviewing plans or conducting inspections pursuant to this chapter shall hold a certificate of competence as provided in subsection A. Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 shall be deemed to have met the provisions of this section for the purposes of renewals.

§ 62.1-44.15:31. Annual standards and specifications for state agencies, federal entities, and other specified entities.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. State entities, including the Department of Transportation, and for linear projects set out in subsection B, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and federal entities and authorities created pursuant to § 15.2-5102 may, annually submit a single set of standards and specifications for Department approval that describes how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of this article and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations. Each project constructed in accordance with the requirements of this article, its attendant regulations, and where required standards and specifications shall obtain coverage issued under the state general permit prior to land disturbance. The standards and specifications shall include:

1. Technical criteria to meet the requirements of this article and regulations developed under this article;
2. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;
3. Provisions for erosion and sediment control and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement;
4. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for local government;
5. Implementation of a project tracking and notification system to the Department of all land-disturbing activities covered under this article; and
6. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of the article.

B. Linear projects subject to annual standards and specifications include:

1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Linear projects not included in subdivisions 1 and 2 shall comply with the requirements of the local or state VSMP in the locality within which the project is located.

C. The Department shall perform random site inspections or inspections in response to a complaint to assure compliance with this article, the Erosion and Sediment Control Law (§ 62.144.15:51 et seq.), and regulations adopted thereunder. The Department may take enforcement actions in accordance with this article and related regulations.

D. The Department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section.

§ 62.1-44.15:32. Duties of the Department.

(For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. The Department shall provide technical assistance, training, research, and coordination in stormwater management technology to VSMP authorities consistent with the purposes of this article.

B. The Department is authorized to review the stormwater management plan for any project with real or potential interjurisdictional impacts upon the request of one or all of the involved localities to determine that the plan is consistent with the provisions of this article. Any such review shall be completed and a report submitted to each locality involved within 90 days of such request being accepted. The Department may charge a fee of the requesting locality to cover its costs for providing such services.

C. The Department shall be responsible for the implementation of this article.
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§62.1-44.15:33. Authorization for more stringent ordinances.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. Localities that are VSMP authorities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address TMDL requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice.

B. Localities that are VSMP authorities shall submit a letter report to the Department when more stringent stormwater management ordinances or more stringent requirements authorized by such ordinances, such as may be set forth in design manuals, policies, or guidance documents developed by the localities, are determined to be necessary pursuant to this section within 30 days

after adoption thereof. Any such letter report shall include a summary explanation as to why the more stringent ordinance or requirement has been determined to be necessary pursuant to this section. Upon the request of an affected landowner or his agent submitted to the Department with a copy to be sent to the locality, within 90 days after adoption of any such ordinance or derivative requirement, localities shall submit the ordinance or requirement and all other supporting materials to the Department for a determination of whether the requirements of this section have been met and whether any determination made by the locality pursuant to this section is supported by the evidence. The Department shall issue a written determination setting forth its rationale within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

C. Localities shall not prohibit or otherwise limit the use of any best management practice (BMP) approved for use by the Director or the Board except as follows:

1. When the Director or the Board approves the use of any BMP in accordance with its stated conditions, the locality serving as a VSMP authority shall have authority to preclude the onsite use of the approved BMP, or to require more stringent conditions upon its use, for a specific land-disturbing project based on a review of the stormwater management plan and project site conditions. Such limitations shall be based on site-specific concerns. Any project or site-specific determination purportedly authorized pursuant to this subsection may be appealed to the Department and the Department shall issue a written determination regarding compliance with this section to the requesting party within 90 days of submission. Any such determination, or a failure by the Department to make any such determination within the 90-day period, may be appealed to the Board.

2. When a locality is seeking to uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP approved by the Director or Board, or to apply more stringent conditions to the use of a BMP approved by the Director or Board, upon the request of an affected landowner or his agent submitted to the Department, with a copy submitted to the locality, within 90 days after adoption, such authorizing ordinances, design manuals, policies, or guidance documents developed by the locality that set forth the BMP use policy shall be provided to the Department in such manner as may be prescribed by the Department that includes a written justification and explanation as to why such more stringent limitation or conditions are determined to be necessary. The Department shall review all supporting materials provided by the locality to determine whether the requirements of this section have been met and that any determination made by the locality pursuant to this section is reasonable under the circumstances. The Department shall issue its determination to the locality in writing within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

D. Based on a determination made in accordance with subsection B or C, any ordinance or other requirement enacted or established by a locality that is found to not comply with this section shall be null and void, replaced with state minimum standards, and remanded to the locality for revision to ensure compliance with this section. Any such ordinance or other requirement that has been proposed but neither enacted nor established shall be remanded to the locality for revision to ensure compliance with this section.

E. Any provisions of a local stormwater management program in existence before January 1, 2013, that contains more stringent provisions than this article shall be exempt from the requirements of this

section. However, such provisions shall be reported to the Board at the time of the locality's VSMP approval package.

§ 62.1-44.15:34. Regulated activities; submission and approval of a permit application; security for performance; exemptions.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance. A locality that is not a VSMP authority shall provide a general notice to applicants of the state permit coverage requirement and report all approvals pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) to begin land disturbance of one acre or greater to the Department at least monthly. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance. The VSMP authority shall act on any permit application within 60 days after it has been determined by the VSMP authority to be a complete application. The VSMP authority may either issue project approval or denial and shall provide written rationale for the denial. The VSMP authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any approval, the VSMP authority may also require an applicant, excluding state and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VSMP authority, to ensure that measures could be taken by the VSMP authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions that may be required of him by the permit conditions as a result of his land-disturbing activity. If the VSMP authority takes such action upon such failure by the applicant, the VSMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

B. A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities until July 1, 2014, at which time it shall no longer be considered a small construction activity but shall be then regulated under the requirements of this article.

C. Notwithstanding any other provisions of this article, the following activities are exempt, unless otherwise required by federal law:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;

2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However, localities subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single-family residences where land disturbance exceeds 2,500 square feet;

4. Land-disturbing activities that disturb less than one acre of land area except for land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the provisions of the Chesapeake Bay Preservation Act (§ 62.144.15:67 et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, the governing body of any locality that administers a VSMP may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

5. Discharges to a sanitary sewer or a combined sewer system;

6. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

8. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity. provisions have expired.

§ 62.1-44.15:35. Nutrient credit use and additional offsite options for construction activities.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. As used in this section:

"Nutrient credit" or "credit" means a nutrient credit certified pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

"Tributary," within the Chesapeake Bay watershed, has the same meaning as in § 62.1-44.19:13. For areas outside of the Chesapeake Bay watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

"Virginia Stormwater Management Program Authority" or "VSMP authority" has the same meaning as in § 62.1-44.15:24 and includes, until July 1, 2014, any locality that has adopted a local stormwater management program.

B. A VSMP authority is authorized to allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 62.1-44.15:28, in whole or in part, through the use of the applicant's acquisition of nutrient credits in the same tributary.

C. No applicant shall use nutrient credits to address water quantity control requirements. No applicant shall use nutrient credits or other offsite options in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to § 62.1-44.15:33 or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

D. A VSMP authority shall allow offsite options in accordance with subsection I when:

1. Less than five acres of land will be disturbed;

2. The postconstruction phosphorous control requirement is less than 10 pounds per year; or

3. The state permit applicant demonstrates to the satisfaction of the VSMP authority that (i) alternative site designs have been considered that may accommodate onsite best management practices, (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met onsite. For purposes of this subdivision, if an applicant demonstrates onsite control of at least 75 percent of the required phosphorous nutrient reductions, the applicant shall be deemed to have met the requirements of clauses (i) through (iv).

E. Documentation of the applicant's acquisition of nutrient credits shall be provided to the VSMP authority and the Department in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity. Until the effective date of regulations establishing application fees in accordance with § 62.1-44.19:20, the credit provider shall pay the Department a water quality enhancement fee equal to six percent of the amount paid by the applicant for the credits. Such fee shall be deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29.

F. Nutrient credits used pursuant to subsection B shall be generated in the same or adjacent eight-digit hydrologic unit code as defined by the United States Geological Survey as the permitted site except as otherwise limited in subsection C. Nutrient credits outside the same or adjacent eight-digit hydrologic unit code may only be used if it is determined by the VSMP authority that no credits are available within the same or adjacent eight-digit hydrologic unit code when the VSMP authority accepts the final site design. In such cases, and subject to other limitations imposed in this section, credits available within the same tributary may be used. In no case shall credits from another tributary be used.

G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nutrient credits, the applicant shall (i) comply with a 1:1 ratio of the nutrient credits to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

H. No VSMP authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient runoff compliance requirements unless offsite options have been considered and found not available.

I. The VSMP authority shall require that nutrient credits and other offsite options approved by the Department or applicable state board, including locality pollutant loading pro rata share programs established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity. A pollutant loading pro rata share program established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state board prior to January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending July 1, 2014. The applicant shall have the right to select between the use of nutrient credits or other offsite options, except during the transition period in those localities to which the transition period applies. The locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share program under § 15.2-2243 for nutrient reductions in the same tributary within the same locality as the land-disturbing activity or for the acquisition of nutrient credits. In the case of a phased project, the applicant may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase.

J. Nutrient reductions obtained through nutrient credits shall be credited toward compliance with any nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater Management Program Permit or Total Maximum Daily Load applicable to the location where the activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall be credited toward compliance with the applicable nutrient allocation.

K. A VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon determination by the VSMP authority that the conditions established by clause (i) or (ii) have been met, the party responsible for maintenance shall be released from maintenance obligations related to the onsite phosphorous controls for which the nutrient credits are substituted.

L. To the extent available, with the consent of the applicant, the VSMP authority, the Board or the Department may include the use of nutrient credits or other offsite measures in resolving enforcement actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

M. This section shall not be construed as limiting the authority established under § 15.2-2243; however, under any pollutant loading pro rata share program established thereunder, the subdivider or developer shall be given appropriate credit for nutrient reductions achieved through nutrient credits or other offsite options.

N. In order to properly account for allowed nonpoint nutrient offsite reductions, an applicant shall report to the Department, in accordance with Department procedures, information regarding all offsite reductions that have been authorized to meet stormwater postdevelopment nonpoint nutrient runoff compliance requirements.

O. An applicant or a permittee found to be in noncompliance with the requirements of this section shall be subject to the enforcement and penalty provisions of this article.

§ 62.1-44.15:37. Monitoring, reports, investigations, inspections, and stop work orders.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c.345)

A. The VSMP authority (i) shall provide for periodic inspections of the installation of stormwater management measures, (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management, and (iii) shall conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article. If the VSMP authority, where authorized to enforce this article, or the Department determines that there is a failure to comply with the permit conditions, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by mailing with confirmation of delivery to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection B by the VSMP authority, where authorized to enforce this article, or by the Board, or the permit may be revoked by the VSMP authority, or the state permit may be revoked by the Board. The Board or the VSMP authority, where authorized to enforce this article, may pursue enforcement in accordance with § 62.1-44.15:48.

B. If a permittee fails to comply with a notice issued in accordance with subsection A within the time specified, the VSMP authority, where authorized to enforce this article, or the Department may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued (i) in accordance with local procedures if issued by a locality serving as a VSMP authority or (ii) after a hearing held in accordance with the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) if issued by the Department. Such orders shall become effective upon service on the person by mailing, with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the VSMP authority or Department. However, if the VSMP authority or the Department finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

§ 62.1-44.15:37.1. Inspections; land-disturbing activities of natural gas pipelines; stop work instructions.

A. The Department is authorized to conduct inspections of the land-disturbing activities of interstate and intrastate natural gas pipeline companies that have approved annual standards and specifications pursuant to § 62.1-44.15:31 as such land-disturbing activities relate to construction of any natural gas transmission pipeline greater than 36 inches inside diameter to determine (i) compliance with such annual standards and specifications, (ii) compliance with any site-specific plans, and (iii) if there have been or are likely to be adverse impacts to water quality as a result of such land-disturbing activities. When the Department determines that there has been a substantial adverse impact to water quality or that an imminent and substantial adverse impact to water quality is likely to occur as a result of such land-disturbing activities, the Department may issue a stop work instruction, without advance notice or hearing, requiring that all or part of such land-disturbing activities on the part of the site that caused the substantial adverse impacts to water quality or are likely to cause imminent and substantial adverse impacts to water quality be stopped until corrective measures specified in the stop work instruction have been completed and approved by the Department.

Such stop work instruction shall become effective upon service on the company by email or other technology agreed to in writing by the Department and the company, by mailing with confirmation of delivery to the address specified in the annual standards and specifications, if available, or by delivery at the site to a person previously identified to the Department by the company. Upon request by the company, the Director or his designee shall review such stop work instruction within 48 hours of issuance.

B. Within 10 business days of issuance of a stop work instruction, the Department shall promptly provide to such company an opportunity for an informal fact-finding proceeding concerning the stop work instruction and any review by the Director or his designee. Reasonable notice as to the time and place of the informal fact-finding proceeding shall be provided to such company. Within 10 business days of the informal fact-finding proceeding, the Department shall affirm, modify, amend, or cancel such stop work instruction. Upon written documentation from the company of the completion and approval by the Department in writing of the corrective measures specified in the stop work instruction, the instruction shall be immediately lifted.

C. The company may appeal such stop work instruction or preliminary decision rendered by the Director or his designee to the circuit court of the jurisdiction wherein the land-disturbing activities subject to the stop work instruction occurred, or to another appropriate court, in accordance with the requirements of the Administrative Process Act (§ 2.2-4000 et seq.). Any person violating or failing, neglecting, or refusing to obey a stop work instruction issued by the Department may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Nothing in this section shall prevent the Board or the Department from taking any other action authorized by this chapter.

§ 62.1-44.15:38. Department to review VSMPs.

(For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. The Department shall develop and implement a review and evaluation schedule so that the effectiveness of each VSMP authority, Municipal Separate Storm Sewer System Management Program, and other MS4 permit requirements is evaluated no less than every five years. The review shall include an assessment of the extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects of localized flooding. Such reviews shall be coordinated with those being implemented in accordance with the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations and, where applicable, the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and associated regulations.

B. Following completion of a compliance review of a VSMP, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the program compliant. If, after such a review and evaluation, a VSMP is found to have a program that does not comply with the provisions of this article or regulations adopted thereunder, the Board shall establish a schedule for the VSMP authority to come into compliance. The Board shall provide a copy of its decision to the VSMP authority that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the VSMP has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any VSMP imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the requirements of this article and its regulations, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 62.1-44.15:29 or (ii) revoke its approval of the VSMP. The Administrative Process Act (§ 2.24000 et seq.) shall govern the activities and proceedings of the Board under this article and the judicial review thereof.

If the Board revokes its approval of a VSMP, the Board shall find the VSMP authority provisional and shall have the Department assist with the administration of the program until the VSMP authority is deemed compliant with the requirements of this article and associated regulations. Assisting with administration includes the ability to review and comment on plans to the VSMP authority, to conduct inspections with the VSMP authority, and to conduct enforcement in accordance with this article and associated regulations.

In lieu of issuing a special order or revoking the program, the Board may take legal action against a VSMP pursuant to § 62.1-44.15:48 to ensure compliance.

§ 62.1-44.15:39. Right of entry.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

The Department, the VSMP authority, where authorized to enforce this article, any duly authorized agent of the Department or VSMP authority, or any locality that is the operator of a regulated municipal separate storm sewer system may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article. For operators of municipal separate storm sewer systems, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VSMP authority may also enter any establishment or

upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

§ 62.1-44.15:40. Information to be furnished.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

The Board, the Department, or the VSMP authority, where authorized to enforce this article, may require every permit applicant, every permittee, or any person subject to state permit requirements under this article to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, U.S. Environmental Protection Agency, or VSMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, disclosure of records of the Department, the Board, or the VSMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than effluent data used by any permittee or under that permittee's direction is prohibited. Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the Department, the Board, or the VSMP authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

§ 62.1-44.15:41. Private rights; liability.

(For expiration date — see notes)

A. (Effective until October 1, 2019) Whenever a common interest community cedes responsibility for the maintenance, repair, and replacement of a stormwater management facility on its real property to the Commonwealth or political subdivision thereof, such common interest community shall be immune from civil liability in relation to such stormwater management facility. In order for the immunity established by this subsection to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by resolution. As used in this section, maintenance, repair, and replacement shall include, without limitation, cleaning of the facility, maintenance of adjacent grounds that are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity that maintains the facility. Acceptance or approval of an easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the Commonwealth or the governing body of the political subdivision required to satisfy clause (ii). The immunity granted by this section shall not apply to actions or omissions by the common interest community constituting intentional or willful misconduct or gross negligence. For the purposes of this section, "common interest community" means the same as that term is defined in § 55-528.

A. (Effective October 1, 2019) Whenever a common interest community cedes responsibility for the maintenance, repair, and replacement of a stormwater management facility on its real property to the Commonwealth or political subdivision thereof, such common interest community shall be immune

from civil liability in relation to such stormwater management facility. In order for the immunity established by this subsection to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by resolution. As used in this section, maintenance, repair, and replacement shall include, without limitation, cleaning of the facility, maintenance of adjacent grounds that are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity that maintains the facility. Acceptance or approval of an easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the Commonwealth or the governing body of the political subdivision required to satisfy clause (ii). The immunity granted by this section shall not apply to actions or omissions by the common interest community constituting intentional or willful misconduct or gross negligence. For the purposes of this section, "common interest community" means the same as that term is defined in § 54.1-2345.

B. Except as provided in subsection A, the fact that any permittee holds or has held a permit or state permit issued under this article shall not constitute a defense in any civil action involving private rights.

§ 62.1-44.15:42. Enforcement by injunction, etc.

(For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. It is unlawful for any person to fail to comply with any stop work order, emergency order issued in accordance with § 62.1-44.15:37, or a special order or emergency special order issued in accordance with § 62.1-44.15:25 that has become final under the provisions of this article. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, approved standard and specification, order, or permit condition issued by the Board, Department, or VSMP authority as authorized to do such, or any provisions of this article, may be compelled in a proceeding instituted in any appropriate court by the Board, Department, or VSMP authority where authorized to enforce this article to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.

B. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty in accordance with the provisions of § 62.1-44.15:48.

§ 62.1-44.15:43. Testing validity of regulations; judicial review.

(For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. The validity of any regulation adopted by the Board pursuant to this article may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. An appeal may be taken from the decision of the court to the Court of Appeals as provided by law.

§ 62.1-44.15:44. Right to hearing.

(For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

Any permit applicant, permittee, or person subject to state permit requirements under this article aggrieved by any action of the Department or Board taken without a formal hearing, or by inaction of the Department or Board, may demand in writing a formal hearing by the Board, provided a petition requesting such hearing is filed with the Board within 30 days after notice of such action.

§ 62.1-44.15:45. Hearings.

(For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

When holding hearings under this article, the Board shall do so in a manner consistent with § 62.1-44.26. A locality holding hearings under this article shall do so in a manner consistent with local hearing procedures.

§ 62.1-44.15:46. Appeals.

(For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

Any permittee or party aggrieved by a state permit or enforcement decision of the Department or Board under this article, or any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Department or Board under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the Constitution of the United States. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury that is an invasion of a legally protected interest and that is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Department or the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions rendered by localities. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this article.

§ 62.1-44.15:47. Appeal to Court of Appeals.

(For repeal date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

From the final decision of the circuit court an appeal may be taken to the Court of Appeals as provided in § 17.1-405.

§ 62.1-44.15:48. Penalties, injunctions, and other legal actions.

(For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. Any person who violates any provision of this article or of any regulation, ordinance, or standard and specification adopted or approved hereunder, including those adopted pursuant to the conditions of an MS4 permit, or who fails, neglects, or refuses to comply with any order of a VSMP authority authorized to enforce this article, the Department, the Board, or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall

adopt a regulation establishing a schedule of civil penalties to be utilized by the VSMP authority in enforcing the provisions of this article. The Board, Department, or VSMP authority may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. Any civil penalties assessed by a court as a result of a summons issued by a locality as an approved VSMP authority shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. Any person who willfully or negligently violates any provision of this article, any regulation or order of the Board, any order of a VSMP authority authorized to enforce this article or the Department, any ordinance of any locality approved as a VSMP authority, any condition of a permit or state permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any provision of this article, any regulation or order of the Board, any order of the VSMP authority or the Department, any ordinance of any locality approved as a VSMP authority, any condition of a permit or state permit, or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this article, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Violation of any provision of this article may also include the following sanctions:

1. The Board, Department, or the VSMP authority, where authorized to enforce this article, may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.

2. With the consent of any person who has violated or failed, neglected, or refused to obey any ordinance, any condition of a permit or state permit, any regulation or order of the Board, any order of the VSMP authority or the Department, or any provision of this article, the Board, Department, or

VSMP authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection A.

§ 62.1-44.15:49. Enforcement authority of MS4 localities.

(For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A. Localities shall adopt a stormwater ordinance pursuant to the conditions of a MS4 permit that is consistent with this article and its associated regulations and that contains provisions including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities and shall include additional provisions as required to comply with a state MS4 permit. Such locality may utilize the civil penalty provisions in subsection A of § 62.1-44.15:48, the injunctive authority as provided for in subdivision D 1 of § 62.1-44.15:48, and the civil charges as authorized in subdivision D 2 of § 62.1-44.15:48, to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

B. Any person who willfully and knowingly violates any provision of such an ordinance is guilty of a Class 1 misdemeanor.

C. The local ordinance authorized by this section shall remain in full force and effect until the locality has been approved as a VSMP authority.

§ 62.1-44.15:49.1. MS4 industrial and high-risk programs.

A. Any locality that owns or operates a municipal separate storm sewer system that is subject to a discharge permit issued pursuant to this chapter shall have the authority to adopt and administer an industrial and high-risk runoff program for industrial and commercial facilities as part of its municipal separate storm sewer system management program.

B. The Board shall not delegate to the locality the Board's authority or responsibilities under the federal Clean Water Act (33 U.S.C. § 1251 et seq.) as to such industrial and commercial facilities.

C. Unless it is required to do so by the adoption on or after January 1, 2018, of a federal regulation or an amendment to the federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Board shall not impose upon the locality, by permit issuance or reissuance, any municipal separate storm sewer system permit condition requiring that (i) an industrial or commercial facility also subject to a permit issued by the Board under this chapter be included in the locality's industrial and high-risk runoff program, (ii) any state discharge monitoring reports or other required reports submitted by such a facility to the Department also be reviewed or enforced by the locality, or (iii) the locality impose additional monitoring requirements on a facility that exceed or conflict with the requirements of any permit issued by the Board under this chapter. The limitation contained in this subsection shall not be cause for the Board or the locality to initiate a major or minor modification of any municipal separate storm sewer system permit that is in effect as of January 1, 2018, during the term of that permit.

D. Notwithstanding the provisions of this section, the Board may, through a municipal separate storm sewer system permit that is issued to the locality, require a locality to refer any industrial or commercial facility to the Board or the Department if the locality becomes aware of a violation of

any industrial stormwater management requirement contained in an individual or general Virginia Pollutant Discharge Elimination System permit issued to the facility pursuant to this chapter.

§ 62.1-44.15:50. Cooperation with federal and state agencies.

(For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)

A VSMP authority and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities for stormwater management.

Virginia Stormwater Management Program (VSMP) Regulation

Chapter 870

NOTE: This copy is up-to-date as of August 5, 2019. This most recent version can be found on the Virginia General Assembly's Legislative Information System website:
<https://law.lis.virginia.gov/admincode/title9/agency25/chapter870/>

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The above sections of the Virginia Stormwater Management Program Regulations pertain to the content that is covered in the Stormwater Certification Trainings. However, this is not a complete version of the regulation. For a complete version, please go to:

<https://law.lis.virginia.gov/admincode/title9/agency25/chapter870/>

9VAC25-870-10. Definitions.

Part I

Definitions, Purpose, and Applicability

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

"Act" means the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

"Approval authority" means the State Water Control Board or its designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice" or "BMP" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems.

"Board" means the State Water Control Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural or manmade waterway.

"Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Chesapeake Bay Preservation Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

"Chesapeake Bay watershed" means all land areas draining to the following Virginia river basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay and its small coastal basins, and York River Basin.

"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations, that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any BMP, stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"Co-operator" means an operator of a state permit that is only responsible for state permit conditions relating to the discharge for which it is the operator.

"Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of this chapter, does not include the exemptions found in 9VAC25-870-300.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Environmental Quality or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the board, for the reporting of self-monitoring results by operators.

"Draft state permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a state individual or general permit. A notice of intent to deny a state individual or general permit is a type of draft state permit. A denial of a request for modification, revocation and reissuance, or termination is not a draft state permit.

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"ESC" means erosion and sediment control.

"Existing state permit" means for the purposes of this chapter a state permit issued by the board and currently held by a state permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP.

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

"Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

"General permit" means a state permit authorizing a category of discharges under the CWA and the Act within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia or 40 CFR Part 116 pursuant to § 311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified as another order.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-870-400 D 2 c (3).

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)." "

"Inspection" means an on-site review of the project's compliance with the permit or the state permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst area" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of Virginia.

"Large construction activity" means construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);
2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;

- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; and
- e. Other relevant factors;

4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"Locality" means a county, city, or town.

"Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

"Major facility" means any facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing state permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G);
2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving surface waters; or
 - e. Other relevant factors;
4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2, and 3 of this definition.

"Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-870-640 . Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor state permit modification or amendment does not substantially alter state permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 9VAC25-870-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"Natural channel design concepts" means the utilization of engineering analysis based on fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective separate VPDES or state permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a separate VPDES or state permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a state permit issued by the board to a state permit applicant that does not currently hold and has never held a state permit of that type, for that activity, at that location. An application for a new permit issued pursuant to this chapter, 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.144.15:4 D of the Code of Virginia.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity. (33 USC § 1362(24))

"Operator" means the owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general permit coverage has been provided where applicable.

"Permittee" means the person to whom the state permit or VSMP authority permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including a federal, state, or local entity as applicable, any interstate body or any other legal entity.

"Point of discharge" means a location at which concentrated stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of groundwater or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of

water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Postdevelopment" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

"Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities this requires the use of a person who holds a certificate of competency from the board in the area of project inspection for ESC and project inspection for SWM or combined administrator for ESC and combined administrator for SWM as defined in 9VAC25-850-10 or a combination of ESC and SWM qualifications from these two areas.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Revoked state permit" means, for the purposes of this chapter, an existing state permit that is terminated by the board before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

"Runoff volume" means the volume of water that runs off the site from a prescribed design storm.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.

"Schedule of compliance" means a schedule of remedial measures included in a state permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA, and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of

development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020 , all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370 , and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31 , permittees may be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 9VAC25-870-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"State" means the Commonwealth of Virginia.

"State application" or "application" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the board for applying for a state permit.

"State/EPA agreement" means an agreement between the EPA regional administrator and the state that coordinates EPA and state activities, responsibilities, and programs including those under the CWA and the Act.

"State permit" means an approval to conduct a land-disturbing activity issued by the board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act, and this chapter. As the mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for stormwater discharges from an MS4 and, after June 30, 2014, a state permit for conducting a land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant Discharge Elimination System (VPDES) Permits. State permit does not include any state permit that has not yet been the subject of final board action, such as a draft state permit. Approvals issued pursuant to this chapter, 9VAC25-880 , and 9VAC25-890 are not issuances of a permit under § 62.1-44.15.01 of the Code of Virginia.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority, or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater conveyance system" means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or

3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

"Stormwater discharge associated with construction activity" means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material for describing methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu of a stormwater management plan as defined in this chapter shall be considered to meet the requirements of a stormwater management plan.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;

- b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce;
- 4. All impoundments of waters otherwise defined as surface waters under this definition;
 - 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
 - 6. The territorial sea; and
 - 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"SWM" means stormwater management.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action plans may be implemented in multiple phases over more than one state permit cycle.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in the Erosion and Sediment Control Act and its attendant regulations, and evaluation consistent with the requirements of the Erosion and Sediment Control Act and its attendant regulations.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the board after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

"VSMP authority" means an authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or the department. An authority may include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the board must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this chapter including the General Permit for Discharges of Stormwater from Construction Activities (9VAC25-880).

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"Water quantity technical criteria" means standards that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

9VAC25-870-15. Applicability of Incorporated References Based on the Dates That They Became Effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, 2017, update. The final rules published in the Federal Register on July 5, 2017 (82 FR 30997), which corrects 40 CFR 441.30, and on August 28, 2017 (82 FR 40836), which amends 40 CFR Part 136, are also incorporated by reference in this chapter.

9VAC25-870-20. Purposes.

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the procedures and requirements to be followed in connection with state permits issued by the board pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management Act and permits issued by a VSMP authority, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter also establishes the board's procedures for the authorization of a VSMP, the board's procedures for approving the administration of a VSMP by a VSMP authority, board and department oversight authorities for a VSMP, and the required technical criteria for stormwater management for land-disturbing activities.

9VAC25-870-30. Applicability.

This chapter is applicable to:

1. Every VSMP authority that administers a VSMP;
2. The department in its oversight of VSMPs or in its administration of the Virginia Stormwater Management Program;
3. Every MS4 program;
4. Every state agency project regulated and every federal entity project covered under the Act and this chapter; and
5. Every land-disturbing activity regulated under § 62.1-44.15:34 of the Code of Virginia unless otherwise exempted in § 62.1-44.15:34 B.

9VAC25-870-40. Authority.

Part II. Administrative and Technical Criteria for Land-Disturbing Activities

Pursuant to the Virginia Stormwater Management Act, the board is required to take actions ensuring the general health, safety, and welfare of the citizens of the Commonwealth as well as protecting the quality and quantity of state waters from the potential harm of unmanaged stormwater. In addition to other authority granted to the board under the Stormwater Management Act, the board is authorized pursuant to §§ 62.1-44.15:25 and 62.1-44.15:28 of the Code of Virginia to adopt regulations that specify standards and procedures for VSMPs, to establish statewide standards for stormwater management for land-disturbing activities, and to protect properties, the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources.

9VAC25-870-45. Implementation Date.

The technical criteria in Part II A and Part II B shall be implemented by a VSMP authority when a General Permit for Discharges of Stormwater from Construction Activities has been issued that incorporates such criteria. Until that time, the required technical criteria shall be found in Part II C. VSMPs adopted in accordance with the Act and this chapter shall become effective July 1, 2014, unless otherwise specified by the board.

9VAC25-870-46. General Objectives.

The physical, chemical, biological, and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved in accordance with the requirements of this part. Objectives include, but are not limited to, supporting state designated uses and water quality standards. All control measures used shall be employed in a manner that minimizes impacts on receiving state waters.

9VAC25-870-47. Applicability of Other Laws and Regulations; Time Limits on Applicability of Approved Design Criteria.

A. Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except as provided in § 62.1-44.15:27 K of the Code of Virginia, and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

B. Land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter. Such projects shall remain subject to the Part II C technical criteria for two additional state permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

C. Land-disturbing activities that obtain an initial state permit on or after July 1, 2014, shall be conducted in accordance with the Part II B (9VAC25-870-62 et seq.) technical criteria of this chapter, except as provided for in 9VAC25-870-48 . Land-disturbing activities conducted in accordance with the Part II B technical criteria shall remain subject to the Part II B technical criteria for two additional state permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

D. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

9VAC25-870-48. Grandfathering.

A. Any land-disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter provided:

1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of this chapter, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

2. A state permit has not been issued prior to July 1, 2014; and

3. Land disturbance did not commence prior to July 1, 2014.

B. Locality, state, and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of this chapter provided:

1. There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;

2. A state permit has not been issued prior to July 1, 2014; and

3. Land disturbance did not commence prior to July 1, 2014.

C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the Part II C technical criteria of this chapter for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

D. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.

E. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

9VAC25-870-51. Chesapeake Bay Preservation Act Land-Disturbing Activity.

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation Act land-disturbing activities shall be regulated by localities subject to the Chesapeake Bay Preservation Act or, in the case of state and federal agency projects, the department. In regulating such land-disturbing activities in accordance with subsection B of this section, localities shall have the same authority and responsibilities as set forth in these regulations for VSMP authorities.

B. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the following technical criteria and program and administrative requirements:

1. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land

disturbing activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.

2. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with 9VAC25-870-55 . Prior to land disturbance, this plan must be approved by the VSMP authority.

3. Exceptions may be requested in accordance with 9VAC25-870-57 .

4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 9VAC25-870-58 .

5. Water quality design criteria in 9VAC25-870-63 shall be applied to the site.

6. Water quality compliance shall be achieved in accordance with 9VAC25-870-65 .

7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-870-66 or as permitted by subsection B of 9VAC25-870-52 .

8. Offsite compliance options in accordance with 9VAC25-870-69 shall be available to Chesapeake Bay Preservation Act land-disturbing activities.

9. Such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in 9VAC25-870-72 , linear development controls in 9VAC25-870-76 , and criteria associated with stormwater impoundment structures or facilities in 9VAC25-870-85 .

9VAC25-870-52. Chesapeake Bay Preservation Act Land-Disturbing Activities in Rural Tidewater Localities.

A. Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and supporting calculations for erosion and sediment control and stormwater management for any land-disturbing activity equal to or greater than 2,500 square feet but less than one acre if the following criteria are met:

1. The plans are prepared and submitted by a professional licensed to engage in practice in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia and who shall hold a certificate of competence in the appropriate subject area, as provided in § 62.1-44.15:30 of the Code of Virginia; and

2. The plan and supporting calculations are appropriately signed and sealed by the professional with a certification that states: "This plan is designed in accordance with applicable state law and regulations."

B. Tiered approach to water quantity technical criteria compliance.

1. A rural Tidewater locality may adopt the following tiered approach to water quantity management based on the percent impervious cover of the watershed in accordance with this subsection for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre:

a. For less than 5.0% impervious cover, apply the Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014, adopted by the board pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, for the protection of downstream properties and waterways from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration.

b. For 5.0% or more impervious cover but less than 7.5%, detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm, which practices shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

c. For 7.5% impervious cover or more, apply the water quantity technical criteria in accordance with 9VAC25-870-66.

2. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the department.

3. Prior to the adoption and implementation of the tiered approach to water quantity management, the local governing body shall:

a. Develop a watershed map that includes the following:

(1) The boundaries of the locality and each watershed located partially or wholly within the locality based on the most recent version of Virginia's 6th order National Watershed Boundary Dataset;

(2) The percentage of impervious cover within each watershed. Data provided by the Virginia Geographic Information Network (VGIN) shall be sufficient for the initial determination of impervious cover percentage at the time of the initial adoption of the map; and

(3) The locations at which the governing body expects or proposes that development should occur and may indicate the projected future percentage of impervious cover based on proposed development. The governing body may designate certain areas within a watershed in which it proposes that denser-than-average development shall occur and may designate environmentally sensitive areas in which the water quantity technical criteria in 9VAC25-870-66 shall apply.

b. After the watershed map has been developed, the governing body may then approve and adopt the map by a majority vote of its membership and publish it as the official watershed map of the locality. No official watershed map shall be adopted by the governing body or have any effect until it is approved by an ordinance duly passed by the governing body of the locality

after a public hearing, preceded by public notice as required by § 15.2-2204 of the Code of Virginia. Within 30 days after adoption of the official watershed map, the governing body shall file the watershed map in the office of the clerk of the circuit court.

4. At least once per year, the governing body shall by majority vote make additions to or modifications of the official watershed map to reflect actual development projects. The governing body shall change the indication on the map of the impervious cover percentage within a watershed where the percentage has changed and shall update the map and supporting datasets with actual development project information, including single-family housing projects and any projects covered by the General VPDES Permit for Discharges of Stormwater from Construction Activities and administered by the department for opt-out localities pursuant to § 62.1-44.15:27 of the Code of Virginia. The governing body may incorporate into the official watershed map the most recent VGIN data, including data on state and federal projects that are not reviewed or approved by the locality. The governing body shall keep current its impervious cover percentage for each watershed located within the locality, as reflected in the official watershed map, and shall make the map and such percentages available to the public.

5. The locality shall notify the department and update the official watershed map within 12 months of the approval of the development plan for any project that exceeds the percent impervious cover percentage of the watershed in which it is located and causes the impervious cover percentage for the watershed to increase such that the watershed percent impervious cover is categorized by the next higher tier pursuant to subdivision B 1 of this section.

6. No official watershed map or its adopting or amending ordinance shall take precedence over any duly adopted zoning ordinance, comprehensive plan, or other local land-use ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield to such land-use ordinance.

9VAC25-870-53. Applicability.

Part II A. General Administrative Criteria for Regulated Land-Disturbing Activities This part applies to all regulated land-disturbing activities.

9VAC25-870-54. Stormwater Pollution Prevention Plan Requirements.

A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.

B. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.

C. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.

D. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

E. In addition to the requirements of subsections A through D of this section, if a specific WLA for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA.

F. The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:

1. Control stormwater volume and velocity within the site to minimize soil erosion;
2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
3. Minimize the amount of soil exposed during construction activity;
4. Minimize the disturbance of steep slopes;
5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;
7. Minimize soil compaction and, unless infeasible, preserve topsoil;
8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VSMP authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VSMP authority; and

9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

G. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

9VAC25-870-55. Stormwater Management Plans.

A. A stormwater management plan shall be developed and submitted to the VSMP authority. The stormwater management plan shall be implemented as approved or modified by the VSMP authority and shall be developed in accordance with the following:

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.
2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

B. A complete stormwater management plan shall include the following elements:

1. Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and postdevelopment drainage areas;
2. Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;
3. A narrative that includes a description of current site conditions and final site conditions or if allowed by the VSMP authority, the information provided and documented during the review process that addresses the current and final site conditions;
4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
5. Information on the proposed stormwater management facilities, including (i) the type of facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) the surface waters or karst features into which the facility will discharge;
6. Hydrologic and hydraulic computations, including runoff characteristics;
7. Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;

8. A map of the site that depicts the topography of the site and includes:

- a. All contributing drainage areas;
- b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
- c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
- d. Current land use including existing structures, roads, and locations of known utilities and easements;
- e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- f. The limits of clearing and grading, and the proposed drainage patterns on the site;
- g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including planned locations of utilities, roads, and easements;

9. If an operator intends to meet the requirements established in 9VAC25-870-63 or 9VAC25-870-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and

10. If payment of a fee is required with the stormwater management plan submission by the VSMP authority, the fee and the required fee form in accordance with Part XIII (9VAC25-870-700 et seq.) must have been submitted.

C. All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.12200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

D. A construction record drawing for permanent stormwater management facilities shall be submitted to the VSMP authority in accordance with 9VAC25-870-108 and 9VAC25-870-112 . The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

9VAC25-870-56. Pollution Prevention Plans.

A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):

1. Wastewater from washout of concrete, unless managed by an appropriate control;
2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
4. Soaps or solvents used in vehicle and equipment washing.

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

9VAC25-870-57. Requesting an Exception.

A request for an exception for Part II B or Part II C of this chapter, including the reasons for making the request, may be submitted in writing to the VSMP authority. Economic hardship alone is not a sufficient reason to request an exception from the requirements of this chapter. The request for an exception will be reviewed pursuant to 9VAC25-870-122 . An exception to the requirement that the land-disturbing activity obtain a state permit will not be granted by the VSMP authority.

9VAC25-870-58. Responsibility for Long-Term Maintenance of Permanent Stormwater Management Facilities.

A recorded instrument shall be submitted to the VSMP authority in accordance with 9VAC25-870-112 .

9VAC25-870-59. Applying for State Permit Coverage.

The operator must submit a complete and accurate registration statement, if such statement is required, on the official department form to the VSMP authority in order to apply for state permit coverage. The registration statement must be signed by the operator in accordance with 9VAC25-870-370 . In accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is required for the construction of a single-family detached residential structure within or outside a common plan of development or sale.

9VAC25-870-62. Applicability.

Part II B. Technical Criteria for Regulated Land-Disturbing Activities

In accordance with the board's authority and except as provided in 9VAC25-870-48 , this part establishes the minimum technical criteria that shall be employed by a state agency in accordance with an implementation schedule set by the board, or by a VSMP authority that has been approved by the board, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities.

9VAC25-870-63. Water Quality Design Criteria Requirements.

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from regulated activities, the following minimum design criteria and statewide standards for stormwater management shall be applied to the site.

1. New development. The total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-870-65 .
2. Development on prior developed lands.
 - a. For land-disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.
 - b. For regulated land-disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 10% below the predevelopment total phosphorus load.
 - c. For land-disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivisions a or b above, shall be applied to the remainder of the site.
 - d. In lieu of subdivision c of this subsection, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.
 - e. The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by a locality.

B. Compliance with subsection A of this section shall be determined in accordance with 9VAC25-870-65.

C. Upon completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan, the department shall review the water quality design criteria standards.

D. Nothing in this section shall prohibit a locality's VSMP authority from establishing more stringent water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of Virginia.

9VAC25-870-65. Water Quality Compliance.

A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of 9VAC25-870-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent methodology that is approved by the board.

B. The BMPs listed in this subsection are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved BMPs found on the Virginia Stormwater BMP Clearinghouse Website may also be utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are found on the Virginia Stormwater BMP Clearinghouse Website.

1. Vegetated Roof (Version 2.3, March 1, 2011);
2. Rooftop Disconnection (Version 1.9, March 1, 2011);
3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
4. Soil Amendments (Version 1.8, March 1, 2011);
5. Permeable Pavement (Version 1.8, March 1, 2011);
6. Grass Channel (Version 1.9, March 1, 2011);
7. Bioretention (Version 1.9, March 1, 2011);
8. Infiltration (Version 1.9, March 1, 2011);
9. Dry Swale (Version 1.9, March 1, 2011);
10. Wet Swale (Version 1.9, March 1, 2011);
11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);
12. Extended Detention Pond (Version 1.9, March 1, 2011);
13. Filtering Practice (Version 1.8, March 1, 2011);
14. Constructed Wetland (Version 1.9, March 1, 2011); and
15. Wet Pond (Version 1.9, March 1, 2011).

C. BMPs differing from those listed in subsection B of this section or proprietary BMPs certified in other states shall be reviewed and approved by the director in accordance with procedures established by the department.

D. VSMP authority may establish limitations on the use of specific BMPs in accordance with § 62.1-44.15:33 of the Code of Virginia.

E. The VSMP authority shall have the discretion to allow for application of the design criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 9VAC25-870-92 .

F. Offsite alternatives where allowed in accordance with 9VAC25-870-69 may be utilized to meet the design criteria of subsection A of 9VAC25-870-63 .

9VAC25-870-66. Water Quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of § 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of the Code of Virginia. Nothing in this section shall prohibit a locality's VSMP authority from establishing a more stringent standard in accordance with § 62.144.15:33 of the Code of Virginia especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-840-40 (Minimum standards; Virginia Erosion and Sediment Control Regulations).

B. Channel protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection.

1. Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:

- a. The manmade stormwater conveyance system shall convey the postdevelopment peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority; or
- b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

2. Restored stormwater conveyance systems. When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural design concepts, following the land-disturbing activity, either:

- a. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or
- b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

3. Natural stormwater conveyance systems. When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity shall be calculated either:

- a. In accordance with the following methodology:

$$Q_{\text{Developed}}^{I.F.} = (Q_{\text{Pre-developed}} * R_{V_{\text{Pre-Developed}}}) / R_{V_{\text{Developed}}}$$

Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$ nor shall $Q_{\text{Developed}}$ be required to be less than that calculated in the equation $(Q_{\text{Forest}} * R_{V_{\text{Forest}}}) / R_{V_{\text{Developed}}}$

Developed; where

I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites 1 acre.

$Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

$R_{V_{\text{Developed}}}$ = The volume of runoff from the site in the developed condition.

$Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.

$R_{V_{\text{Pre-Developed}}}$ = The volume of runoff from the site in pre-developed condition.

Q_{Forest} = The peak flow rate of runoff from the site in a forested condition. $R_{V_{\text{Forest}}}$ =

The volume of runoff from the site in a forested condition; or

- b. In accordance with another methodology that is demonstrated by the VSMP authority to achieve equivalent results and is approved by the board.

4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

- a. Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or
- b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.

C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of acceptable hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the 10-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority.
2. Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event: The point of discharge either:
 - a. Confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority; or
 - b. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event that is less than the predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.
3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:
 - a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;
 - b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
 - c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the

site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the VSMP authority that actual site conditions warrant such considerations.

F. Predevelopment and postdevelopment runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and on the Virginia Stormwater BMP Clearinghouse Website shall be considered appropriate practices.

9VAC25-870-69. Offsite Compliance Options.

A. Offsite compliance options that a VSMP authority may allow an operator to use to meet required phosphorus nutrient reductions include the following:

1. Offsite controls utilized in accordance with a comprehensive stormwater management plan adopted pursuant to 9VAC25-870-92 for the local watershed within which a project is located;
2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243 of the Code of Virginia or similar local funding mechanism;
3. The nonpoint nutrient offset program established pursuant to § 62.1-44.15:35 of the Code of Virginia;
4. Any other offsite options approved by an applicable state agency or state board; and
5. When an operator has additional properties available within the same HUC or upstream HUC that the land-disturbing activity directly discharges to or within the same watershed as determined by the VSMP authority, offsite stormwater management facilities on those properties may be utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity.

B. Notwithstanding subsection A of this section, and pursuant to § 62.1-44.15:35 of the Code of Virginia, operators shall be allowed to utilize offsite options identified in subsection A of this section under any of the following conditions:

1. Less than five acres of land will be disturbed;
2. The post-construction phosphorus control requirement is less than 10 pounds per year; or
3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the operator can demonstrate to the satisfaction of the VSMP authority that (i) alternative site designs have been considered that may accommodate on-site best management practices,

(ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.

C. Notwithstanding subsections A and B of this section, offsite options shall not be allowed:

1. Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land-disturbing activity. In the case of a phased project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land-disturbing activity in an amount sufficient for each phase.

2. In contravention of local water quality-based limitations at the point of discharge that are (i) consistent with the determinations made pursuant to subsection B of § 62.1-44.19:7 of the Code of Virginia, (ii) contained in a municipal separate storm sewer system (MS4) program plan accepted by the department, or (iii) as otherwise may be established or approved by the board.

D. In order to meet the requirements of 9VAC25-870-66, offsite options described in subdivisions 1 and 2 of subsection A of this section may be utilized.

9VAC25-870-72. Design Storms and Hydrologic Methods.

A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. Unless otherwise specified, all hydrologic analyses shall be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.

D. For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the Rational Method for evaluating peak discharges.

E. For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the Modified Rational Method for evaluating volumetric flows to stormwater conveyances.

9VAC25-870-74. Stormwater Harvesting.

In accordance with § 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulations.

9VAC25-870-76. Linear Development Projects.

Linear development projects shall control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations.

9VAC25-870-85. Stormwater Management Impoundment Structures or Facilities.

- A. Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for structural integrity for the 100-year storm event.
- B. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a study of the geology and hydrology of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.
- C. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 9VAC25-870-63 and the water quantity criteria set out in 9VAC25-870-66. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to screen for known existence of heritage resources in the karst features. Any Class V Underground Injection Control Well registration statements for stormwater discharges to improved sinkholes shall be included in the SWPPP.

9VAC25-870-92. Comprehensive Stormwater Management Plans.

A locality's VSMP authority may develop comprehensive stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this chapter:

1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the locality's VSMP authority to prevent downstream erosion and flooding.
2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the locality's VSMP authority, such authority shall provide plan amendments to the department for review and approval.
3. During the plan's implementation, the locality's VSMP authority shall document nutrient reductions accredited to the BMPs specified in the plan.
4. State and federal agencies may develop comprehensive stormwater management plans, and may participate in locality-developed comprehensive stormwater management plans where practicable and permitted by the locality's VSMP authority.

9VAC25-870-93. Definitions.

Part II C. Technical Criteria for Regulated Land-Disturbing Activities:. Grandfathered Projects and Projects Subject to the Provisions of 9VAC25-870-47 B

For the purposes of Part II C only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Aquatic bench" means a 10-foot to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior to September 13, 2011.

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume (i) through an engineered planting bed consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed and (ii) into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area to maintain the desired water surface elevations to support emergent vegetation.

"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding or stream channel erosion.

"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration, and absorption, and is dedicated for that purpose.

"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.

9VAC25-870-94. Applicability.

This part specifies the technical criteria for regulated land-disturbing activities that are not subject to the technical criteria of Part II B in accordance with 9VAC25-870-48.

9VAC25-870-95. General.

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are consistent with good engineering practices.

G. Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided whenever possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas defined in the Chesapeake Bay Preservation Act provided such facilities are allowed and constructed in accordance with the Stormwater Management Act and this chapter, and provided that (i) the local government has conclusively established that the location of the facility within the resource protection area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 or with a VSMP that has been approved prior to July 1, 2012, by the board, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.

9VAC25-870-96. Water Quality.

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. Performance-based criteria. For land-disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located,

designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in Table 1 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1 or those found in 9VAC25-870-65. Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency are available in the 1999 Virginia Stormwater Management Handbook. Other approved BMPs available on the Virginia Stormwater BMP Clearinghouse Website may also be utilized.

Table 1*

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench	65%	
*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.		

9VAC25-870-97. Stream Channel Erosion.

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The VSMP authority shall require compliance with subdivision 19 of 9VAC25-840-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to the Erosion and Sediment Control Law.

C. The locality's VSMP authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities or where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional waters. Therefore, in lieu of the reduction of the two-year postdeveloped peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, a locality's VSMP authority by local ordinance may in accordance with § 62.1-44.15:33 of the Code of Virginia, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.
3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
4. Criteria for the selection of proposed natural or manmade channel linings.

9VAC25-870-98. Flooding.

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year postdeveloped peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance in accordance with § 62.1-44.15:33 of the Code of Virginia, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control postdeveloped stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

9VAC25-870-99. Regional (Watershed-Wide) Stormwater Management Plans.

Water quality requirements and where allowed, water quantity requirements, may be achieved in accordance with sections 9VAC25-870-69 and 9VAC25-870-92 .

9VAC25-870-100. Applicability.

Part III.

General Provisions Applicable to VSMPs and VSMP Authorities.

This part establishes the board's procedures for the authorization of a VSMP, the board's procedures for the administration of a VSMP by a locality's VSMP authority or by other VSMP authorities where the procedures may be applicable, and board and department oversight authorities for a VSMP.

9VAC25-870-102. Authority.

If an authorized entity pursuant to § 62.1-44.15:27 of the Code of Virginia has adopted a VSMP in accordance with the Virginia Stormwater Management Act and the board has deemed such program adoption consistent with the Virginia Stormwater Management Act and these regulations in accordance with § 62.1-44.15:27 of the Code of Virginia, the board may authorize the entity to administer a VSMP. Pursuant to § 62.1-44.15:28 of the Code of Virginia, the board is required to establish standards and procedures for such an authorization.

9VAC25-870-103. Requirements for Chesapeake Bay Preservation Act Land-Disturbing Activities.

A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated with Chesapeake Bay Preservation Act land-disturbing activities in accordance with the following:

1. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the technical criteria and program and administrative requirements set out in 9VAC25-870-51 .
2. A local or VSMP authority permit, as applicable, shall be issued permitting the land-disturbing activity.
3. The locality shall regulate such land-disturbing activities in compliance with the:
 - a. Program requirements in 9VAC25-870-104 ;
 - b. Plan review requirements in 9VAC25-870-108 with the exception of subsection D of 9VAC25-870-108 or as allowed in subsection A of 9VAC25-870-52 ;
 - c. Long-term stormwater management facility requirements of 9VAC25-870-112 ;
 - d. Inspection requirements of 9VAC25-870-114 with the exception of subdivisions A 3 and A 4 of 9VAC25-870-114 ;
 - e. Enforcement components of 9VAC25-870-116 ;
 - f. Hearing requirements of 9VAC25-870-118 ;
 - g. Exception conditions of 9VAC25-870-122 excluding subsection C of 9VAC25-870-122 which is not applicable; and

h. Reporting and recordkeeping requirements of 9VAC25-870-126 with the exception of subdivision B 3 of 9VAC25-870-126 .

B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that incorporates the components of this section.

C. In accordance with subdivision A 5 of § 62.1-44.15:28 of the Code of Virginia, a locality's VSMP authority may collect a permit issuance fee from the applicant of \$290 and an annual maintenance fee of \$50 for such land-disturbing activities.

9VAC25-870-104. Criteria for Programs Operated by a VSMP Authority.

Part III A. Programs Operated by a VSMP Authority

A. All VSMP authorities shall require compliance with the provisions of Part II (9VAC25-870-40 et seq.) of this chapter.

B. When a locality's VSMP authority has adopted requirements more stringent than those imposed by this chapter in accordance with § 62.1-44.15:33 of the Code of Virginia or implemented a comprehensive stormwater management plan, the department shall consider such requirements in its review of state projects within that locality in accordance with Part IV (9VAC25-870-160 et seq.) of this chapter.

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state or federal project, unless authorized by separate statute.

D. A VSMP authority may require, excluding state and federal entities, the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in § 62.1-44.15:34 of the Code of Virginia.

9VAC25-870-106. Additional Requirements for VSMP Authorities.

A. A locality's VSMP authority shall adopt ordinances, and other VSMP authorities shall provide program documentation, that ensure compliance with the requirements set forth in 9VAC25-870-460 L.

B. The locality's VSMP authority shall adopt ordinances, and other VSMP authorities shall provide program documentation, at least as stringent as the provisions of the General Permit for Discharges of Stormwater from Construction Activities.

9VAC25-870-108. Stormwater Management Plan Review.

A. A VSMP authority shall review and approve stormwater management plans.

B. A VSMP authority shall approve or disapprove a stormwater management plan according to the following:

1. The VSMP authority shall determine the completeness of a plan in accordance with 9VAC25-870-55 , and shall notify the applicant of any determination, within 15 calendar days of receipt.

Where available to the applicant, electronic communication may be considered communication in writing.

- a. If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.
- b. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.
- c. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.
- d. The VSMP authority shall review, within 45 calendar days of the date of resubmission, any plan that has been previously disapproved.

2. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the VSMP authority. Where available to the applicant, electronic communication may be considered communication in writing.

3. If a plan meeting all requirements of this chapter and of the VSMP authority is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. Each approved plan may be modified in accordance with the following:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the VSMP authority. The VSMP authority shall have 60 calendar days to respond in writing either approving or disapproving such requests.
2. Based on an inspection, the VSMP authority may require amendments to the approved stormwater management plan to address any deficiencies within a time frame set by the VSMP authority.

D. Upon the development of an online reporting system by the department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of state permit coverage, where it is required, prior to providing approval to begin land disturbance.

E. The VSMP authority shall require the submission of a construction record drawing for permanent stormwater management facilities in accordance with 9VAC25-870-55 . A VSMP authority may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to 9VAC25-870-112 .

9VAC25-870-112. Long-Term Maintenance of Permanent Stormwater Management Facilities.

A. The VSMP authority shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to state permit termination or earlier as required by the VSMP authority and shall at a minimum:

1. Be submitted to the VSMP authority for review and approval prior to the approval of the stormwater management plan;
2. Be stated to run with the land;
3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the VSMP authority; and
5. Be enforceable by all appropriate governmental parties.

B. At the discretion of the VSMP authority, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the VSMP authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the VSMP authority.

9VAC25-870-114. Inspections.

A. The VSMP authority shall inspect the land-disturbing activity during construction for:

1. Compliance with the approved erosion and sediment control plan;
2. Compliance with the approved stormwater management plan;
3. Development, updating, and implementation of a pollution prevention plan; and
4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The VSMP authority shall establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

1. Be approved by the board;
2. Ensure that each stormwater management facility is inspected by the VSMP authority, or its designee, not to include the owner, except as provided in subsections C and D of this section, at least once every five years; and
3. Be documented by records.

C. The VSMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the board.

D. If a recorded instrument is not required pursuant to 9VAC25-870-112 , a VSMP authority shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the VSMP authority.

9VAC25-870-116. Enforcement.

A. A locality's VSMP authority shall incorporate components from subdivisions 1 and 2 of this subsection.

1. Informal and formal administrative enforcement procedures may include:

- a. Verbal warnings and inspection reports;
- b. Notices of corrective action;
- c. Consent special orders and civil charges in accordance with subdivision 6 of § 62.144.15:25 and § 62.1-44.15:48 D 2 of the Code of Virginia;
- d. Notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia;
- e. Special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the Code of Virginia;
- f. Emergency special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the Code of Virginia; and
- g. Public notice and comment periods for proposed settlements and consent special orders pursuant to 9VAC25-870-660 .

2. Civil and criminal judicial enforcement procedures may include:

- a. Schedule of civil penalties in accordance with § 62.1-44.15:48 of the Code of Virginia;
- b. Criminal penalties in accordance with § 62.1-44.15:48 B and C of the Code of Virginia; and
- c. Injunctions in accordance with §§ 62.1-44.15:25 , 62.1-44.15:42 , and 62.1-44.15:48 D 1 of the Code of Virginia.

B. A locality's VSMP authority shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and local ordinances.

C. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, the locality's VSMP authority has the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with § 62.1-44.15:48 A of the Code of Virginia. Such penalty may reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance. Violations include, but are not limited to:

1. No state permit registration;
2. No SWPPP;
3. Incomplete SWPPP;
4. SWPPP not available for review;
5. No approved erosion and sediment control plan;
6. Failure to install stormwater BMPs or erosion and sediment controls;
7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
8. Operational deficiencies;
9. Failure to conduct required inspections;
0. Incomplete, improper, or missed inspections.

D. Pursuant to subdivision 2 of § 62.1-44.15:25 of the Code of Virginia, authorization to administer a VSMP program shall not remove from the board the authority to enforce the provisions of the Act and attendant regulations.

E. The department may terminate state permit coverage during its term and require application for an individual state permit or deny a state permit renewal application for failure to comply with state permit conditions or on its own initiative in accordance with the Act and this chapter.

F. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, civil penalties recovered by a locality's VSMP authority shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

G. The VSMP authority may use additional guidance concerning suggested penalty amounts provided by the department.

9VAC25-870-118. Hearings.

Any permit applicant, permittee, or person subject to state permit requirements under the Stormwater Management Act aggrieved by any action of the department or board taken without a formal hearing may demand in writing a formal hearing pursuant to § 62.144.15:44 of the Code of

Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner consistent with § 62.1-44.26 of the Code of Virginia or as otherwise provided by law. A locality holding hearings under this chapter shall do so in a manner consistent with local hearing procedures. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall not apply to decisions rendered by localities. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this chapter.

9VAC25-870-122. Exceptions.

A. A VSMP authority may grant exceptions to the provisions of Part II B or Part II C of this chapter. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the VSMP authority grant an exception to the requirement that the land-disturbing activity obtain required state permits, nor approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part II C (9VAC25-870-93 et seq.) of this chapter.

D. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through 9VAC25-870-69 have been considered and found not available.

E. A record of all exceptions granted shall be maintained by the VSMP authority in accordance with 9VAC25-870-126 .

9VAC25-870-126. Reports and Recordkeeping.

A. On a fiscal year basis (July 1 to June 30), a VSMP authority shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, geographic coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;
2. Number and type of enforcement actions during the fiscal year; and
3. Number of exceptions granted during the fiscal year.

B. A VSMP authority shall keep records in accordance with the following:

1. Project records, including approved stormwater management plans, shall be kept for three years after state permit termination or project completion.
2. Stormwater management facility inspection records shall be documented and retained for at least five years from the date of inspection.
3. Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed.
4. All registration statements submitted in accordance with 9VAC25-870-59 shall be documented and retained for at least three years from the date of project completion or state permit termination.

9VAC25-870-142. Authority and Applicability.

Part III B. Department of Environmental Quality Procedures for Review of VSMPs

This part specifies the criteria that the department will utilize in reviewing a VSMP authority's administration of a VSMP pursuant to § 62.1-44.15:38 of the Code of Virginia following the board's approval of such program in accordance with the Act and this chapter.

9VAC25-870-144. Virginia Stormwater Management Program Review.

A. The department shall review each board-approved VSMP at least once every five years on a review schedule approved by the board. The department may review a VSMP on a more frequent basis if deemed necessary by the board and shall notify the VSMP authority if such review is scheduled.

B. The review of a board-approved VSMP shall consist of the following:

1. Consultation with the VSMP administrator or designee;
2. A review of the local ordinance(s) and other applicable documents;
3. A review of a subset of the plans approved by the VSMP authority for consistency of application including exceptions granted and calculations or other documentation that demonstrates that required nutrient reductions are achieved using appropriate on-site and off-site compliance options;
4. A review of the funding and staffing plan developed in accordance with 9VAC25-870-148 ;
5. An inspection of regulated activities; and
6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions where applicable.

C. The department shall coordinate the once per five year review with its other program reviews for the same entity to avoid redundancy.

D. The department shall provide results and compliance recommendations to the board in the form of a corrective action plan and schedule if deficiencies are found within 120 days of the

completion of a review otherwise the board may find the program compliant.

E. The board shall determine if the VSMP and ordinances where applicable are consistent with the Act and state stormwater management regulations and notify the VSMP authority of its findings. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the board and the judicial review thereof.

F. If the board determines that the deficiencies noted in the review will cause the VSMP to be out of compliance with the Act and attendant regulations, the board shall notify the VSMP authority concerning the deficiencies and provide a reasonable period of time in accordance with § 62.1-44.15:38 of the Code of Virginia for corrective action to be taken. If the VSMP authority agrees to the corrective action approved by the board, the VSMP will be considered to be conditionally compliant with the Act and attendant regulations until a subsequent finding of compliance is issued by the board. If the VSMP authority fails to implement the necessary compliance actions identified by the board within the specified time, the board may take action pursuant to § 62.1-44.15:38 of the Code of Virginia.

9VAC25-870-146. Authority and Applicability.

Part III C. State Water Control Board Authorization Procedures for Virginia Stormwater Management Programs

Subdivision A 1 of § 62.1-44.15:28 of the Code of Virginia requires that the board establish standards and procedures for administering a VSMP. In accordance with that requirement, and with the further authority conferred upon the board by the Virginia Stormwater Management Act, this part specifies the procedures the board will utilize in authorizing a VSMP authority to administer a VSMP.

9VAC25-870-148. Virginia Stormwater Management Program Administrative Requirements.

A. A VSMP shall provide for the following:

1. Identification of the authority accepting complete registration statements and of the authorities completing plan review, plan approval, inspection, and enforcement;
2. Submission and approval of erosion and sediment control plans in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations and the submission and approval of stormwater management plans;
3. Requirements to ensure compliance with 9VAC25-870-54 , 9VAC25-870-55 , and 9VAC25-870-56 ;
4. Requirements for inspections and monitoring of construction activities by the operator for compliance with local ordinances;
5. Requirements for long-term inspection and maintenance of stormwater management facilities;
6. Collection, distribution to the state if required, and expenditure of fees;

7. Enforcement procedures and civil penalties where applicable;
8. Policies and procedures to obtain and release bonds, if applicable; and
9. Procedures for complying with the applicable reporting and recordkeeping requirements in 9VAC25-870-126 .

B. A locality's VSMP authority shall adopt and enforce an ordinance that incorporates the components set out in subdivisions 1 through 5 and 7 of subsection A of this section. Other VSMP authorities shall provide supporting documentation that incorporates the components set out in subdivisions 1 through 5 of subsection A of this section in a format acceptable to the department.

C. Notice of termination of general permit coverage.

1. A VSMP authority shall recommend that the department terminate coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) within 60 days of receiving a complete notice of termination from the operator of the construction activity.
2. Coverage under a Construction General Permit shall be deemed to be terminated 90 days after the receipt by the VSMP authority of a complete notice of termination from the operator of the construction activity.
3. If a VSMP authority receives a notice of termination of a Construction General Permit that it determines to be incomplete, the VSMP authority shall, within a reasonable time, inform the operator of the construction activity of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice.

9VAC25-870-150. Authorization Procedures for Virginia Stormwater Management Programs.

A. A locality adopting a VSMP in accordance with § 62.1-44.15:27 of the Code of Virginia must submit to the board an application package that, at a minimum, contains the following:

1. The draft VSMP ordinance(s) as required in 9VAC25-870-148 ;
2. A funding and staffing plan;
3. The policies and procedures including, but not limited to:
 - a. Agreements with soil and water conservation districts, adjacent localities, or other public or private entities for the administration, plan review, inspection, and enforcement components of the program; and
 - b. Contracts with third-party professionals who hold certificates of competence in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30 of the Code of Virginia, to carry out any or all of the responsibilities that Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia requires of a VSMP authority, including plan review and inspection but not including enforcement; and

4. Such ordinances, plans, policies, and procedures must account for any town lying within the county as part of the locality's VSMP program unless such towns choose to adopt their own program.

B. Upon receipt of an application package, the board or its designee shall have 30 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify to the VSMP authority applicant in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the board or its designee shall have 120 calendar days for the review of the application package, unless an extension of time, not to exceed 12 months unless otherwise specified by the board in accordance with § 62.1-44.15:27 of the Code of Virginia, is requested by the department, provided the VSMP authority applicant has made substantive progress. During the 120-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the VSMP authority applicant in writing. If the application is not approved, the reasons for not approving the application shall be provided to the VSMP authority applicant in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and this chapter.

D. A VSMP authority applicant in accordance with § 62.1-44.15:27 of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 62.1-44.15:27 and shall adopt a VSMP consistent with the Act and this chapter within the timeframe established pursuant to § 62.1-44.15:27 or otherwise established by the board.

E. A locality or other authorized entity not required to adopt a VSMP in accordance with § 62.1-44.15:27 of the Code of Virginia but electing to adopt a VSMP shall notify the department. Such notification shall include a proposed adoption date for a local stormwater management program on or after July 1, 2014, in accordance with a schedule developed by the department.

9VAC25-870-160. Technical Criteria and Requirements for State Projects.

Part IV. Technical Criteria and State Permit Application Requirements for State Projects

A. This part specifies technical criteria and administrative procedures for all state projects.

B. Stormwater management state permit applications prepared for state projects shall comply with the technical criteria outlined in Part II (9VAC25-870-40 et seq.) of this chapter and, to the largest extent practicable, any locality's VSMP authority's technical requirements adopted pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the locality's VSMP authority's technical requirements are not practicable for the project under consideration.

C. The department may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria.

D. As a minimum, a stormwater management state permit application shall contain the following:

1. The location and the design of the proposed stormwater management facilities.
2. Overall site plan with pre-developed and post-developed condition drainage area maps.
3. Comprehensive hydrologic and hydraulic computations of the predevelopment and postdevelopment runoff conditions for the required design storms, considered individually.
4. Calculations verifying compliance with the water quality requirements.
5. A description of the requirements for maintenance of the stormwater management facilities and a recommended schedule of inspection and maintenance.
6. The identification of a person or persons who will be responsible for maintenance.
7. All final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

9VAC25-870-170. Requirements for State Stormwater Management Annual Standards and Specifications.

A. Standards and specifications may, and after June 30, 2014, shall, be submitted to the department by a state agency on an annual basis. Such standards and specifications shall be consistent with the requirements of the Act, this chapter, the General Permit for Discharges of Stormwater from Construction Activities (9VAC25-880), and the Erosion and Sediment Control Law and associated regulations. Each project constructed in accordance with the requirements of the Act, this chapter, and where required standards and specifications shall obtain coverage issued under the state general permit prior to land disturbance. State agency stormwater management standards and specifications describe how land-disturbing activities shall be conducted and shall include, but are not limited to:

1. Technical criteria to meet the requirements of the Act and this chapter;
2. Provisions for the preparation of individual stormwater management and erosion and sediment control plans for each project. In addition, the individual plans, to the maximum extent practicable, shall comply with any locality's VSMP authority's technical requirements adopted pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the locality's VSMP authority's technical requirements are not practicable for the project under consideration;
3. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff, including an inspection and maintenance schedule, shall be developed and implemented;

4. Provisions for erosion and sediment control and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement;
5. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for VSMP authorities;
6. Implementation of a project tracking and notification system to the department of all land-disturbing activities covered under the Act and this chapter; and
7. Requirements for documenting on-site changes as they occur to ensure compliance with the requirements of the Act and this chapter.

B. Copies of such stormwater management specifications and standards including, but not limited to, design manuals, technical guides and handbooks, shall be submitted.

9VAC25-870-180. Administrative Procedures: Stormwater Management Permit Applications.

A. Within 30 days after receipt of a complete state permit application (registration statement) submitted by a state agency, the department shall issue or deny the state permit.

1. The department shall transmit its decision in writing to the state agency that submitted the state permit application.
2. Denied state permit applications shall be revised and resubmitted to the department.

B. Approval of a state permit application (registration statement) for a state project shall be subject to the following conditions:

1. The state agency shall comply with all applicable requirements of the state permit and this chapter, and shall certify that all land clearing, construction, land development, and drainage will be done according to the state permit.
2. The land development shall be conducted only within the area specified in the state permit.
3. No changes may be made to a plan for which a state permit has been issued without review and written approval by the department.
4. The department shall be notified one week prior to the pre-construction meeting and one week prior to the commencement of land-disturbing activity.
5. The department shall conduct random inspections of the project to ensure compliance with the state permit.
6. The department shall require inspections and reports from the state agency responsible for compliance with the state permit and to determine if the measures required in the state permit provide effective stormwater management.

C. Compliance with the state permit shall be subject to the following conditions:

1. Where inspection by the responsible state agency reveals deficiencies in carrying out a permitted activity, the responsible state agency shall ensure compliance with the issued state permit, state permit conditions, and plan specifications.

2. Where inspections by department personnel reveal deficiencies in carrying out the state permit, the responsible state agency shall be issued a notice to comply, with corrective actions specified and the deadline within which the work shall be performed.

3. Whenever the Commonwealth or any of its agencies fail to comply within the time provided in a notice to comply, the director may petition the secretary of a given secretariat or an agency head for a given state agency for compliance. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution.

4. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

5. The department may also seek compliance through other means specified in the Act and this chapter.

9VAC25-870-190. (Reserved)

9VAC25-870-200. Administrative Procedures: Maintenance and Inspections.

A. Responsibility for the operation and maintenance of stormwater management facilities shall remain with the state agency and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each state project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. At a minimum, a stormwater management facility shall be inspected by the responsible state agency on an annual basis and after any storm which causes the capacity of the facility principal spillway to be exceeded.

C. During construction of the stormwater management facilities, the department shall make inspections on a random basis.

D. The department shall require inspections and reports from the state agency responsible for ensuring compliance with the state permit and to determine if the measures required in the state permit provide effective stormwater management.

E. Inspection reports shall be maintained as part of the land disturbance project file.

9VAC25-870-210. Reporting on Stormwater Management.

Part V. Reporting

State agencies shall report annually, on a schedule to be specified, to the department on the extent to which stormwater management programs have reduced nonpoint source pollution to the Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide the following: data on the number and types of stormwater management facilities installed in the preceding year, the drainage area or watershed size served, the receiving stream or hydrologic unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness of the programs and BMP technologies in current use. VSMP authorities shall report in accordance with 9VAC25-870-126 .

9VAC25-870-220 Through 9VAC25-870-290. (Reserved)

9VAC25-870-300. Exclusions.

Part VI. General Program Requirements Related to MS4s and Land-Disturbing Activities The following discharges do not require state permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.
2. Discharges of dredged or fill material into surface waters that are regulated under § 404 of the CWA.
3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with state permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.
4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).
5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations,

discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

6. Return flows from irrigated agriculture.

7. Discharges into a privately owned treatment works, except as the State Water Control Board may otherwise require.

9VAC25-870-310. Prohibitions.

A. Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.

B. Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the state permit.

C. No state permit may be issued:

1. When the conditions of the state permit do not provide for compliance with the applicable requirements of the CWA or the Act, or regulations promulgated under the CWA or the Act;
2. When the state permit applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;
3. When the regional administrator has objected to issuance of the state permit;

4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;
8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:
 - a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the board determines state permit issuance to be in the public interest; or
 - b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.
9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the Act and §§ 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:
 - a. There are sufficient remaining pollutant load allocations to allow for the discharge; and
 - b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The board may waive the submission of information by the new source or new discharger required by this subdivision if the board determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the state permit under 9VAC25-870-520 .

9VAC25-870-320. Effect of a State Permit.

A. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA and standards for sewage sludge use or disposal under § 405(d) of the CWA, compliance with a state permit during its term constitutes compliance, for purposes of enforcement, with the Act and with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA. However, a state permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.

B. The issuance of a state permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a state permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

9VAC25-870-330. Continuation of Expiring State Permits.

A. The state permit shall expire at the end of its term, except that the conditions of an expired state permit continue in force until the effective date of a new state permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new state permit; and
2. The board, through no fault of the permittee, does not issue a new state permit with an effective date on or before the expiration date of the previous state permit.

B. State permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired state permit the board may choose to do any or all of the following:

1. Initiate enforcement action based upon the state permit which has been continued;
2. Issue a notice of intent to deny the new state permit. If the state permit is denied, the owner or operator would then be required to cease the activities authorized by the continued state permit or be subject to enforcement action for operating without a state permit;
3. Issue a new state permit with appropriate conditions; or
4. Take other actions authorized by this chapter.

9VAC25-870-340. Confidentiality of Information.

A. The board, the department, or the VSMP authority may require every state permit applicant or state permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act and this chapter. Any personal information shall not be disclosed except to an appropriate official of the board, department, or VSMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:

1. Disclosure of records of the department, the board, or the VSMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions is prohibited. Upon request, such records shall be disclosed after a proposed

sanction resulting from the investigation has been determined by the department, the board, or the VSMP authority.

2. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes" "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

3. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any state permit applicant or state permittee;
2. State permit applications, state permits, and effluent data.

C. Information required by state permit application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

9VAC25-870-350. Guidance Documents.

The board may develop and use guidance, as appropriate, to implement technical and regulatory details of the state permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the board or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the Stormwater Management Act.

9VAC25-870-360. Application for a State Permit.

Part VII. State Permit Applications

A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or upon state waters from municipal separate storm sewer systems or land-disturbing activities and who does not have an effective state permit, except persons covered by general permits, excluded from the requirement for a state permit by this chapter, shall submit a complete application in accordance with this section.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a state permit.

C. Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Stormwater discharges from large construction activities and stormwater discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90-day or 180-day requirements to avoid delay.

D. Duty to reapply. All state permittees with a currently effective state permit shall submit a new application at least 180 days before the expiration date of the existing state permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing state permit.

E. Completeness. The board shall not issue a state permit before receiving a complete application for a state permit except for general permits. An application for a state permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a state permit shall be judged independently of the status of any other state permit application or state permit for the same facility or activity.

F. Information requirements. All applicants for state permits shall provide the following information using the application form provided by the department:

1. The activities conducted by the state permit applicant which require it to obtain a state permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, email address, ownership status, and status as federal, state, private, public, or other entity;
5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received, applied for, or to be applied for under any of the following programs:
 - a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA) (42 USC § 6921);
 - b. UIC program under the Safe Drinking Water Act (SDWA) (42 USC § 300h);
 - c. VPDES program under the CWA and the State Water Control Law;
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42

USC § 4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);

h. Dredge or fill permits under § 404 of the CWA;

i. A state permit under the CWA and the Virginia Stormwater Management Act; and

j. Other relevant environmental permits, including state permits;

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, which depicts: the facility and (i) each of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage, or disposal facilities; (iii) each well where fluids from the facility are injected underground; and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the state permit applicant in the map area; and

8. A brief description of the nature of the business.

G. Variance requests. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft state permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided, however, that a § 301(g) variance may only be requested for ammonia, chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant covered by § 301(b)(2)(F) of the

CWA) and any other pollutant that the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the state permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft state permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Administrator establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft state permit on the state permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a state permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft state permit. A copy of the request shall be sent simultaneously to the department.

H. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsection G of this section, the board may notify a state permit applicant before a draft state permit is issued that the draft state permit will likely contain limitations which are eligible for variances. In the notice the board may require the state permit applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the state permit application has been submitted. The draft or final state permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions G 2 a (2) or G 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

I. Recordkeeping. State permit applicants shall keep records of all data used to complete state permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

9VAC25-870-370. Signatories to State Permit Applications and Reports.

A. All state permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by state permits, and other information requested by the board shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Electronic reporting. If documents described in subsection A or B of this section are submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section and shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

9VAC25-870-380. Stormwater Discharges.

A. State permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be required to obtain a state permit except:

- a. A discharge with respect to which a state permit has been issued prior to February 4, 1987;
- b. A stormwater discharge associated with large construction activity;
- c. A discharge from a large municipal separate storm sewer system;
- d. A discharge from a medium municipal separate storm sewer system; or
- e. A discharge that either the board or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances that do not require a state permit under subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from the definition of point source.

The board may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the board may consider the following factors:

- (1) The location of the discharge with respect to surface waters;
- (2) The size of the discharge;
- (3) The quantity and nature of the pollutants discharged to surface waters; and
- (4) Other relevant factors.

2. The board may not require a state permit for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows that are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. a. State permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

b. The board may either issue one system-wide state permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct state permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

c. The operator of a discharge from a municipal separate storm sewer that is part of a large or medium municipal separate storm sewer system must either:

(1) Participate in a state permit application (to be a state permittee or a state co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system that covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(2) Submit a distinct state permit application that only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(3) A regional authority may be responsible for submitting a state permit application under the following guidelines:

(a) The regional authority together with state permit co-applicants shall have authority over a stormwater management program that is in existence, or shall be in existence at the time Part 1 of the application is due;

(b) The state permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(c) Each of the operators of municipal separate storm sewers within large or medium municipal separate storm sewer systems, that are under the purview of the designated regional authority, shall comply with the application requirements of subsection C of this section.

d. One state permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The board may issue one system-wide state permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

e. State permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the state permit, including different management programs for different drainage areas that contribute stormwater to the system.

f. State co-permittees need only comply with state permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

4. In addition to meeting the requirements of subsection B of this section, an operator of a stormwater discharge associated with a large construction activity that discharges through a large or medium municipal separate storm sewer system shall submit to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, that best reflects the principal products or services provided by each facility; and any existing state permit number.

5. The board may issue state permits for municipal separate storm sewers that are designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue state permits for individual discharges.

6. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain separate VPDES permits in accordance with the procedures of 9VAC25-31 and are not subject to the provisions of this section.

7. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this subsection shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

8.a. On and after October 1, 1994, for discharges composed entirely of stormwater, that are not required by subdivision 1 of this subsection to obtain a state permit, operators shall be required to obtain a state permit only if:

(1) The discharge is from a small MS4 required to be regulated pursuant to 9VAC25-870-400 B;

(2) The discharge is a stormwater discharge associated with small construction activity as defined in 9VAC25-870-10;

(3) The board or the EPA regional administrator determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(4) The board or the EPA regional administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4) of this subsection shall seek coverage under a state permit in accordance with 9VAC25-870-400 C through E. Operators of nonmunicipal sources designated pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a state permit in accordance with subdivision B 1 of this section.

c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and (4) of this subsection shall apply to the board for a state permit within 180 days of receipt of notice, unless permission for a later date is granted by the board.

B. Application requirements for stormwater discharges associated with large and small construction activity.

1. Dischargers of stormwater associated with large and small construction activity are required to apply for an individual state permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual state permit, or any discharge of stormwater that the board is evaluating for designation under subdivision A 1 e of this section and is not a municipal separate storm sewer, shall submit a state application in accordance with the requirements of 9VAC25-870-360 as modified and supplemented by the provisions of this subsection.

a. The operator of an existing or new stormwater discharge that is associated with a large or small construction activity shall provide a narrative description of:

(1) The location (including a map) and the nature of the construction activity;

(2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the state permit;

(3) Proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable state and VESCP requirements;

(4) Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local VESCP requirements;

(5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the state permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(6) The name of the receiving water.

(7) Location of Chesapeake Bay Preservation Areas.

b. State permit applicants shall provide such other information the board may reasonably require to determine whether to issue a state permit.

C. Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the board under subdivision A 1 e of this section may submit a jurisdiction-wide or system-wide state permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a state permit coapplicant to the same application. State permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subdivision A 1 e of this section shall include;

1. Part 1 of the application shall consist of:

a. The state permit applicants' name, address, telephone number, and email address; ownership status; status as a state or local government entity; and the name, address, telephone number, and email address of a contact person;

b. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in subdivision 2 a of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;

c. Source identification.

(1) A description of the historic use of ordinances, guidance or other controls that limited the discharge of nonstormwater discharges to any publicly owned treatment works serving the same area as the municipal separate storm sewer system.

(2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale

between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the state permit application. The following information shall be provided:

- (a) The location of known municipal storm sewer system outfalls discharging to surface waters;
- (b) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural, and industrial uses) accompanied with estimates of population densities and projected growth for a 10-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;
- (c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;
- (d) The location and the state permit number of any known discharge to the municipal storm sewer that has been issued a state permit;
- (e) The location of major structural controls for stormwater discharge (retention basins, detention basins, major infiltration devices, etc.); and
- (f) The identification of publicly owned parks, recreational areas, and other open lands;

d. Discharge characterization.

- (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.
- (2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.
- (3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:
 - (a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of the State Water Control Law and the CWA goals (fishable and swimmable waters), and causes of nonsupport of designated uses;
 - (b) Listed under § 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;
 - (c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA that,

without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under § 314(a) of the CWA (include the following: a description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(e) Areas of concern of the Great Lakes identified by the International Joint Commission;

(f) Designated estuaries under the National Estuary Program under § 320 of the CWA;

(g) Recognized by the state permit applicant as highly valued or sensitive waters;

(h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the state permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of nonstormwater discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the state permit applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

- (b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;
- (c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;
- (d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;
- (e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;
- (f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and
- (g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this subsection, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the state permit applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the state permit applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.
- (5) Information and a proposed program to meet the requirements of subdivision 2 c of this subsection. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under subdivision 2 c (1) of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, and a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see subdivision 1 d (3) of this subsection) to the extent practicable;

e. Management programs.

(1) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to, procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements.

(2) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and

f. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the state permit application. A description of the municipality's budget for existing stormwater programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for stormwater programs.

2. Part 2 of the application shall consist of:

a. A demonstration that the state permit applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts that authorizes or enables the state permit applicant at a minimum to:

(1) Control through ordinance, state permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than stormwater;

(4) Control through interagency agreements among state permit coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(5) Require compliance with conditions in ordinances, state permits, contracts or orders; and

(6) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with state permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer;

b. The location of any major outfall that discharges to surface waters that was not reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) that best reflects the principal products or services provided by each facility that may discharge, to the municipal separate storm sewer, stormwater associated with industrial activity;

c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of this subsection, the state permit applicant must collect a sample of effluent in accordance with 9VAC25-870-390 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the state permit applicant may use any suitable method but must provide a description of the method. The state permit applicant must provide information characterizing the quality and quantity of discharges covered in the state permit application, including:

(1) Quantitative data from representative outfalls designated by the board (based on information received in Part 1 of the application, the board shall designate between five and 10 outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls) covered in the application, the board shall designate all outfalls developed as follows:

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of stormwater discharges from three storm events occurring at least one month apart in accordance with the requirements at 9VAC25-870-390 (the board may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(b) A narrative description shall be provided of the date and duration of the storm event or events sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of this subsection, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D, and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

Chemical oxygen demand (COD)

Biochemical oxygen demand (BOD5)

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

(d) Additional limited quantitative data required by the board for determining state permit conditions (the board may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to ensure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to surface waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to surface waters from all identified municipal outfalls during a storm event (as described under 9VAC25-870-390) for BOD₅, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under subdivision 2 c (1) of this subsection; and

(4) A proposed monitoring program for representative data collection for the term of the state permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

d. A proposed management program that covers the duration of the state permit. It shall include a comprehensive planning process that involves public participation and, where necessary, intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions that are appropriate. The

program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each state permit coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the board when developing state permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the state permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in subdivision 2 d (4) of this subsection;

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible;

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under subdivision 2 d (3) of this subsection); and

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer that will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators

and distributors, and controls for application in public right-of-ways and at municipal facilities;

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate state permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of nonstormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to surface waters: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm sewers, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to surface waters);

(b) A description of procedures to conduct on-going field screening activities during the life of the state permit, including areas or locations that will be evaluated by such field screens;

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstormwater (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue Active Substances—MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(3) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC § 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(b) Describe a monitoring program for stormwater discharges associated with the industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented during the term of the state permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing separate VPDES permit for a facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 9VAC25-870-390 F and G; and

(4) A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include:

(a) A description of procedures for site planning that incorporate consideration of potential water quality impacts;

(b) A description of requirements for nonstructural and structural best management practices;

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(d) A description of appropriate educational and training measures for construction site operators;

e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal stormwater quality management program. The assessment shall also identify known impacts of stormwater controls on groundwater;

f. For each fiscal year to be covered by the state permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subdivisions 2 c and d of this subsection. Such analysis shall include a

description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;

g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this subsection are not practicable or are not applicable, the board may exclude any operator of a discharge from a municipal separate storm sewer that is designated under subdivision A 1 e of this section, or that is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I (except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties) from such requirements. The board shall not exclude the operator of a discharge from a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I from any of the state permit application requirements under this subdivision except where authorized under this subsection.

D. Petitions.

1. Any operator of a municipal separate storm sewer system may petition the appropriate authority or the State Water Control Board to require a separate state permit for any discharge into the municipal separate storm sewer system.

2. Any person may petition the board to require a state permit for a discharge which is composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

3. Any person may petition the board for the designation of a large, medium or small municipal separate storm sewer system as defined by this chapter.

4. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in which case the board shall make a final determination on the petition within 180 days after its receipt.

**General VPDES Permit for Discharges of Stormwater from Construction
Activities
Chapter 880**

NOTE: This copy of the regulation is up-to-date as of July 1, 2019. This most recent version can be found on the Virginia General Assembly's Legislative Information System website:

<https://law.lis.virginia.gov/admincodeexpand/title9/agency25/chapter880>

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9VAC25-880-1. Definitions.

The words and terms used in this chapter shall have the meanings defined in the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia), this chapter, and 9VAC25-870 unless the context clearly indicates otherwise, except as otherwise specified in this section. Terms not defined in the Act, this chapter, or 9VAC25-870 shall have the meaning attributed to them in the federal Clean Water Act (33 USC § 1251 et seq.) (CWA). For the purposes of this chapter:

"Business day" means Monday through Friday excluding state holidays.

"Commencement of land disturbance" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Construction site" means the land where any land-disturbing activity is physically located or conducted, including any adjacent land used or preserved in connection with the land-disturbing activity.

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed), mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
 - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
 - b. The homebuilder establishing temporary soil stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and providing written notification to the homeowner of the need for, and benefits of, final stabilization. The homebuilder shall maintain a copy of the written notification and a signed statement certifying that the information was provided to the homeowner in accordance with the stormwater pollution prevention plan recordkeeping requirements as specified in Part II G 6.
3. For construction projects on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that

are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

"Immediately" means as soon as practicable, but no later than the end of the next business day, following the day when the land-disturbing activities have temporarily or permanently ceased. In the context of this general permit, "immediately" is used to define the deadline for initiating stabilization measures.

"Impaired waters" means surface waters identified as impaired on the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report.

"Infeasible" means not technologically possible or not economically practicable and achievable in light of best industry practices.

"Initiation of stabilization activities" means:

1. Prepping the soil for vegetative or nonvegetative stabilization;
2. Applying mulch or other nonvegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area; or
5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

This list is not exhaustive.

"Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over 24 hours.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

9VAC25-880-10. Purpose.

This general permit regulation governs stormwater discharges from regulated construction activities. For the purposes of this chapter, these discharges are defined as stormwater discharges associated with large construction activity, and stormwater discharges associated with small construction activity. Stormwater discharges associated with other types of industrial activity shall not have coverage under this general permit. This general permit covers only discharges through a point source to surface waters or through a municipal or nonmunicipal separate storm sewer system to surface waters. Stormwater discharges associated with industrial activity that originate from construction activities that have been completed and the site has undergone final stabilization are not authorized by this general permit.

9VAC25-880-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated herein, that regulation shall be as it exists and has been published in the July 1, 2018, update.

9VAC25-880-20. Effective date of general permit.

This general permit is effective on July 1, 2019. The general permit will expire on June 30, 2024. This general permit is effective for any covered operator upon compliance with all provisions of 9VAC25-880-30.

9VAC25-880-30. Authorization to discharge.

A. Any operator governed by this general permit is authorized to discharge to surface waters of the Commonwealth of Virginia provided that:

1. The operator submits a complete and accurate registration statement in accordance with 9VAC25-880-50, unless not required, and receives acceptance of the registration by the board;
2. The operator submits any permit fees, unless not required, in accordance with 9VAC25-870-700 et seq.;
3. The operator complies with the applicable requirements of 9VAC25-880-70;
4. The operator obtains approval of:
 - a. An erosion and sediment control plan from the appropriate Virginia Erosion and Sediment Control Program (VESCP) authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840), unless the operator receives from the VESCP authority an "agreement in lieu of a plan" as defined in 9VAC25-840-10 or prepares the erosion and sediment control plan in accordance with annual standards and specifications approved by the department.; and
 - b. Except as specified in 9VAC25-880-70 Part II B 3 b, a stormwater management plan from the appropriate Virginia Stormwater Management Program (VSMP) authority as authorized under the VSMP Regulation (9VAC25-870), unless the operator receives from the VSMP authority an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 or prepares the stormwater management plan in accordance with annual standards and specifications approved by the department.; and
5. The board has not notified the operator that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board will notify an operator that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The operator is required to obtain an individual permit in accordance with 9VAC25-870-410 B;
2. The operator is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges;
3. The discharge causes, may reasonably be expected to cause, or contributes to a violation of water quality standards (9VAC25-260);
4. The discharge violates or would violate the antidegradation policy in the Water Quality Standards (9VAC25-260-30); or
5. The discharge is not consistent with the assumptions and requirements of an applicable TMDL approved prior to the term of this general permit.

C. This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

1. The support activity is directly related to a construction activity that is required to have general permit coverage for discharges of stormwater from construction activities;
2. The support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators;
3. The support activity does not operate beyond the completion of the last construction activity it supports;
4. The support activity is identified in the registration statement at the time of general permit coverage;
5. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and
6. All applicable, state, federal, and local approvals are obtained for the support activity.

D. Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another state or VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

E. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized

by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

F. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit:

1. Discharges from firefighting activities;
2. Fire hydrant flushings;
3. Water used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
4. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;
5. Potable water source, including uncontaminated waterline flushings, managed in a manner to avoid an instream impact;
6. Routine external building wash down where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
7. Pavement wash water where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where the wash water has been filtered, settled, or similarly treated prior to discharge;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated groundwater or spring water;
10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
11. Uncontaminated, excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and
12. Landscape irrigations.

G. Approval for coverage under this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

H. Continuation of general permit coverage.

1. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal date established by the board, which cannot extend beyond the expiration date of the permit. The permittee is authorized to continue to discharge until such time as the board either:

- a. Issues coverage to the operator under this general permit; or
- b. Notifies the operator that the discharge is not eligible for coverage under this general permit.

2. When the operator that was covered under the expiring or expired general permit has violated the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the general permit coverage that has been continued;
- b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the operator would then be required to cease discharges authorized by the continued general permit coverage or be subject to enforcement action for operating without a state permit;
- c. Issue a new state permit with appropriate conditions; or
- d. Take other actions authorized by the VSMP Regulation (9VAC25-870).

9VAC25-880-40. Delegation of authorities to state and local programs.

A board-approved VSMP authority is authorized to administer requirements of this general permit, including but not limited to: (i) registration statement acceptance, (ii) fee collection, and (iii) stormwater management plan review and approval dependent upon conditions established as part of the board approval.

9VAC25-880-50. Registration statement.

A. Deadlines for submitting registration statement. Any operator seeking coverage under this general permit, and that is required to submit a registration statement, shall submit a complete and accurate general VPDES permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges of stormwater from construction activities.

1. New construction activities.

- a. Any operator proposing a new stormwater discharge from construction activities shall submit a complete and accurate registration statement to the VSMP authority prior to the commencement of land disturbance.

b. Any operator proposing a new stormwater discharge from construction activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment is authorized to discharge under this general permit, provided that:

(1) The operator submits a complete and accurate registration statement to the VSMP authority no later than 30 days after commencing land disturbance; and

(2) Documentation to substantiate the occurrence of the public emergency is provided with the registration statement.

c. Any operator proposing a new stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee.

2. Existing construction activities.

a. Any operator that was authorized to discharge under the expiring or expired general permit and who intends to continue coverage under this general permit shall:

(1) Submit a complete and accurate registration statement to the VSMP authority at least 60 days prior to the expiration date of the existing permit or a later submittal date established by the board; and

(2) Update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

b. Any operator with an existing stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale that intends to continue coverage under this general permit, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee, provided that the operator updates its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

3. For stormwater discharges from construction activities where the operator changes, the new operator must submit a complete and accurate registration statement or transfer agreement form and any other documents deemed necessary by the VSMP authority to the VSMP authority to demonstrate transfer of ownership and long-term maintenance responsibilities for stormwater management facilities, as required, has occurred prior to assuming operational control over site specifications or commencing work on-site.

4. Late notifications. Operators are not prohibited from submitting registration statements after commencing land disturbance. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur between the commencement of land disturbance and discharge authorization.

5. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 a of this section will be accepted after the expiration date of this permit, but authorization to discharge will not be retroactive. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur after existing permit coverage expires and prior to coverage under this permit is approved.

B. Registration statement. The operator shall submit a registration statement to the VSMP authority that shall contain the following information:

1. Name, contact, mailing address, telephone number, and email address if available of the construction activity operator. No more than one operator may receive coverage under each registration statement;

NOTE: General permit coverage will be issued to this operator, and the certification in subdivision 17 of this subsection shall be signed by the appropriate person associated with this operator as described in Part III K of 9VAC25-880-70.

2. Name and physical location address of the construction activity, when available, to be covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);

3. A site map (in an 8.5 inch by 11 inch format) showing the location of the existing or proposed land-disturbing activities for which the operator is seeking permit coverage, the limits of land disturbance, construction entrances, on-site support activities, and all water bodies receiving stormwater discharges from the site;

4. If offsite support activities will be used, the name and physical location address, when available, of those offsite support activities, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and whether or not the offsite support activity will be covered under this general permit or a separate VPDES permit;

5. Status of the construction activity: federal, state, public, or private;

6. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

7. If stormwater management plans for the construction activity have been approved by an entity with department approved annual standards and specifications, the name of the entity with the department approved annual standards and specifications. A

copy of the annual standard and specification entity form shall be submitted with the registration statement;

8. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, the date of erosion and sediment control plan approval for the estimated area to be disturbed by the construction activity during this permit term;

9. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, whether land disturbance has commenced;

10. Name of the receiving water(s) and HUC;

11. If the discharge is through a municipal separate storm sewer system (MS4), the name of the MS4 operator;

12. Estimated project start date and completion date;

13. Total land area of development and estimated area to be disturbed by the construction activity during this permit term (to the nearest one-hundredth of an acre);

14. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

15. If nutrient credits are to be used to demonstrate compliance with the water quality technical criteria as allowed in 9VAC25-870-65 F, a letter of availability from an appropriate nutrient bank that nonpoint source nutrient credits are available;

16. A stormwater pollution prevention plan (SWPPP) shall be prepared in accordance with the requirements of the General VPDES Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP has been prepared; and

17. The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9VAC25-880-70, Part III K.

9VAC25-880-60. Termination of general permit coverage.

A. Requirements. The operator of the construction activity shall submit a complete and accurate notice of termination, unless a registration statement was not required to be submitted in accordance with 9VAC25-880-50 A 1 c or A 2 b for single-family detached residential structures, to the VSMP authority after one or more of the following conditions have been met:

1. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator has operational control. When applicable, long-term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination, and the construction record drawing prepared;
2. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
3. Coverage under an alternative VPDES or state permit has been obtained; or
4. For individual lots in residential construction only, final stabilization as defined in 9VAC25-880-1 has been completed, including providing written notification to the homeowner and incorporating a copy of the notification and signed certification statement into the SWPPP, and the residence has been transferred to the homeowner.

B. Notice of termination due date and effective date.

1. The notice of termination shall be submitted no later than 30 days after one of the conditions in subsection A of this section is met.
2. Termination of authorization to discharge for the conditions set forth in subdivision A 1 of this section shall become effective upon notification from the department that the provisions of subdivision A 1 of this section have been met or 60 days after submittal of a complete and accurate notice of termination, whichever occurs first.
3. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions A 2 through A 4 of this section unless otherwise notified by the VSMP authority or the department.

C. Notice of termination. The complete notice of termination shall contain the following information:

1. Name, contact, mailing address, telephone number, and email address, if available, of the construction activity operator;

2. Name and physical location address of the construction activity, when available, covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);

3. The general permit registration number.

4. The basis for submission of the notice of termination, pursuant to subsection A of this section.

5. Where applicable, a list of the on-site and off-site permanent control measures (both structural and nonstructural) that were installed to comply with the stormwater management water quality and water quantity technical criteria. For each permanent control measure that was installed, the following information shall be included:

- a. The type of permanent control measure installed and the date that it became functional as a permanent control measure;
- b. The location if available of the permanent control measure, including city or county, and latitude and longitude in decimal degrees;
- c. The receiving water to which the permanent control measures discharge; and
- d. The number of total and impervious acres treated by the permanent control measure (to the nearest one-hundredth of an acre).

6. Where applicable, the following information related to participation in a regional stormwater management plan. For each regional stormwater management facility, the following information shall be included:

- a. The type of regional facility to which the site contributes;
- b. The location of the regional facility, including city or county, and latitude and longitude in decimal degrees; and
- c. The number of total and impervious site acres treated by the regional facility (to the nearest one-hundredth of an acre).

7. Where applicable, the following information related to perpetual nutrient credits that were acquired in accordance with § 62.1-44.15:35 of the Code of Virginia:

- a. The name of the nonpoint nutrient credit generating entity from which perpetual nutrient credits were acquired; and
- b. The number of perpetual nutrient credits acquired (lbs. per acre per year).

8. A construction record drawing in a format as specified by the VSMP authority for permanent stormwater management facilities in accordance with 9VAC25-870-55 D appropriately sealed and signed by a professional registered in the Commonwealth of

Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan;

9. Where applicable, evidence that the signed Stormwater Management Maintenance Agreement has been recorded in an instrument within the local land records;

10. For individual lots in residential construction only when the homebuilder established temporary soil stabilization, a signed statement from the permittee that the new owner, if not the same as the permittee, has been notified of the final stabilization requirements; and

11. The following certification: "I certify under penalty of law that I have read and understand this notice of termination and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

D. The notice of termination shall be signed in accordance with 9VAC25-880-70 Part III K.

E. Termination by the board. The board may terminate coverage under this general permit during its term and require application for an individual permit or deny a general permit renewal application on its own initiative in accordance with the Act, this chapter, and the VSMP Regulation, 9VAC25-870.

9VAC25-880-70. General permit.

Any operator whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements contained therein and be subject to all requirements of 9VAC25-870.

General Permit No.: VAR10
Effective Date: July 1, 2019
Expiration Date: June 30, 2024
**GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM
CONSTRUCTION ACTIVITIES
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER
MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER
MANAGEMENT ACT**

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant thereto, operators of construction activities are authorized to discharge to surface waters within

the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the registration statement filed with the Department of Environmental Quality, this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Stormwater Pollution Prevention Plan, and Part III - Conditions Applicable to All VPDES Permits as set forth in this general permit.

PART I DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this general permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the general permit's expiration date, the operator is authorized to discharge stormwater from construction activities.
2. This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:
 - a. The support activity is directly related to the construction activity that is required to have general permit coverage for discharges of stormwater from construction activities;
 - b. The support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators;
 - c. The support activity does not operate beyond the completion of the last construction activity it supports;
 - d. The support activity is identified in the registration statement at the time of general permit coverage;
 - e. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and
 - f. All applicable state, federal, and local approvals are obtained for the support activity.

B. Limitations on coverage.

1. Post-construction discharges. This general permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any support activity sites covered under the general permit registration, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.
2. Discharges mixed with nonstormwater. This general permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges

that are identified in Part I E (Authorized nonstormwater discharges) and are in compliance with this general permit.

3. Discharges covered by another state permit. This general permit does not authorize discharges of stormwater from construction activities that have been covered under an individual permit or required to obtain coverage under an alternative general permit.

4. Impaired waters and total maximum daily load (TMDL) limitation.

a. Nutrient and sediment impaired waters. Discharges of stormwater from construction activities to surface waters identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for (i) sediment or a sediment-related parameter (i.e., total suspended solids or turbidity) or (ii) nutrients (i.e., nitrogen or phosphorus) are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a stormwater pollution prevention plan (SWPPP) in accordance with Part II B 5 of this permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations and implements an inspection frequency consistent with Part II G 2 a.

b. Polychlorinated biphenyl (PCB) impaired waters. Discharges of stormwater from construction activities that include the demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, to surface waters identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for PCB are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP in accordance with Part II B 6 of this permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations, and implements an inspection frequency consistent with Part II G 2 a.

5. Exceptional waters limitation. Discharges of stormwater from construction activities not previously covered under the general permit effective on July 1, 2014, to exceptional waters identified in 9VAC25-260-30 A 3 c are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP in accordance with Part II B 7 of this permit and implements an inspection frequency consistent with Part II G 2 a.

6. There shall be no discharge of floating solids or visible foam in other than trace amounts.

C. Commingled discharges. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

D. Prohibition of nonstormwater discharges. Except as provided in Parts I A 2, I C, and I E, all discharges covered by this general permit shall be composed entirely of stormwater associated with construction activities. All other discharges including the following are prohibited:

1. Wastewater from washout of concrete;
2. Wastewater from the washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
4. Oils, toxic substances, or hazardous substances from spills or other releases; and
5. Soaps, solvents, or detergents used in equipment and vehicle washing.

E. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit when discharged in compliance with this general permit:

1. Discharges from firefighting activities;
2. Fire hydrant flushings;
3. Waters used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
4. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;
5. Potable water sources, including uncontaminated waterline flushings, managed in a manner to avoid an instream impact;
6. Routine external building wash down where soaps, solvents or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
7. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where the wash water has been filtered, settled, or similarly treated prior to discharge;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated ground water or spring water;
10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
11. Uncontaminated excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and
12. Landscape irrigation.

F. Termination of general permit coverage.

1. The operator of the construction activity shall submit a notice of termination in accordance with 9VAC25-880-60, unless a registration statement was not required to be submitted in accordance with 9VAC25-880-50 A 1 c or A 2 b for single-family detached residential structures, to the VSMP authority after one or more of the following conditions have been met:

- a. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator has operational control. When applicable, long term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination and the construction record drawing prepared;
- b. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
- c. Coverage under an alternative VPDES or state permit has been obtained; or
- d. For individual lots in residential construction only, final stabilization as defined in 9VAC25-880-1 has been completed, including providing written notification to the homeowner and incorporating a copy of the notification and signed certification statement into the SWPPP, and the residence has been transferred to the homeowner.

2. The notice of termination should be submitted no later than 30 days after one of the above conditions in subdivision 1 of this subsection is met.

3. Termination of authorization to discharge for the conditions set forth in subdivision 1 a of this subsection shall be effective upon notification from the department that the provisions of subdivision 1 a of this subsection have been met or 60 days after submittal of a complete and accurate notice of termination in accordance with 9VAC25-880-60 C, whichever occurs first.

4. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions 1 b through 1 d of this subsection unless otherwise notified by the VSMP authority or department.

5. The notice of termination shall be signed in accordance with Part III K of this general permit.

G. Water quality protection.

1. The operator must select, install, implement and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard.

2. If it is determined by the department that the operator's discharges are causing, have reasonable potential to cause, or are contributing to an excursion above any applicable water quality standard, the department, in consultation with the VSMP authority, may take appropriate enforcement action and require the operator to:

- a. Modify or implement additional control measures in accordance with Part II C to adequately address the identified water quality concerns;
- b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
- c. Submit an individual permit application in accordance with 9VAC25-870-410 B 3.

All written responses required under this chapter must include a signed certification consistent with Part III K.

PART II

STORMWATER POLLUTION PREVENTION PLAN

A. Stormwater pollution prevent plan.

1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to the submission of a registration statement and implemented for the construction activity, including any support activity, covered by this general permit. SWPPPs shall be prepared in accordance with good engineering practices. Construction activities that are part of a larger common plan of development or sale and disturb less than one acre may utilize a SWPPP template provided by the department and need not provide a separate stormwater management plan if one has been prepared and implemented for the larger common plan of development or sale.
2. The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II B. All plans incorporated by reference into the SWPPP become enforceable under this general permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator must develop the missing elements and include them in the SWPPP.
3. Any operator that was authorized to discharge under the general permit effective July 1, 2014, and that intends to continue coverage under this general permit, shall update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

B. Contents. The SWPPP shall include the following items:

1. General information.
 - a. A signed copy of the registration statement, if required, for coverage under the general VPDES permit for discharges of stormwater from construction activities;

- b. Upon receipt, a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities (i.e., notice of coverage letter);
- c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities;
- d. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);
- e. A legible site plan identifying:
 - (1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;
 - (2) Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed;
 - (3) Locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment, that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration;
 - (4) Locations of surface waters;
 - (5) Locations where concentrated stormwater is discharged;
 - (6) Locations of support activities, including (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage; and
 - (7) When applicable, the location of the on-site rain gauge or the methodology established in consultation with the VSMP authority used to identify measurable storm events for inspection as allowed by Part II G 2 a (1) (ii) or 2 b (2).

2. Erosion and sediment control plan.

- a. An erosion and sediment control plan designed and approved in accordance with the Virginia Erosion and Sediment Control Regulations (9VAC25-840), an "agreement in lieu of a plan" as defined in 9VAC25-840-10 from the VESCP authority, or an erosion and sediment control plan prepared in accordance with annual standards and specifications approved by the department.

b. All erosion and sediment control plans shall include a statement describing the maintenance responsibilities required for the erosion and sediment controls used.

c. An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to:

- (1) Control the volume and velocity of stormwater runoff within the site to minimize soil erosion;
- (2) Control stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
- (3) Minimize the amount of soil exposed during the construction activity;
- (4) Minimize the disturbance of steep slopes;
- (5) Minimize sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site;
- (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible;
- (7) Minimize soil compaction and, unless infeasible, preserve topsoil;
- (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days; and
- (9) Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps.

3. Stormwater management plan.

a. Except for those projects identified in Part II B 3 b, a stormwater management plan approved by the VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), or an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 from the VSMP authority, or a stormwater management plan prepared in accordance with annual standards and specifications approved by the department.

b. For any operator meeting the conditions of 9VAC25-870-47 B of the VSMP regulation, an approved stormwater management plan is not required. In lieu of an approved stormwater management plan, the SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable VESCP authority, VSMP authority, state, and federal requirements, and any necessary permits must be obtained.

4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall:

- a. Identify the potential pollutant-generating activities and the pollutant that is expected to be exposed to stormwater;
- b. Describe the location where the potential pollutant-generating activities will occur, or if identified on the site plan, reference the site plan;
- c. Identify all nonstormwater discharges, as authorized in Part I E of this general permit, that are or will be commingled with stormwater discharges from the construction activity, including any applicable support activity;
- d. Identify the person responsible for implementing the pollution prevention practice or practices for each pollutant-generating activity (if other than the person listed as the qualified personnel);
- e. Describe the pollution prevention practices and procedures that will be implemented to:
 - (1) Prevent and respond to leaks, spills, and other releases including (i) procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Part III G;
 - (2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available);
 - (3) Prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, including the clean-up of stucco, paint, form release oils, and curing compounds (e.g., providing (i) cover (e.g., plastic sheeting or temporary roofs) to prevent contact with stormwater; (ii) collection and proper

disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants);

(4) Minimize the discharge of pollutants from vehicle and equipment washing, wheel wash water, and other types of washing (e.g., locating activities away from surface waters and stormwater inlets or conveyance and directing wash waters to sediment basins or traps, using filtration devices such as filter bags or sand filters, or using similarly effective controls);

(5) Direct concrete wash water into a leak-proof container or leak-proof settling basin. The container or basin shall be designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters;

(6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials;

(7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, waste concrete, and sanitary wastes;

(8) Address any other discharge from the potential pollutant-generating activities not addressed above; and

(9) Minimize the exposure of waste materials to precipitation by closing or covering waste containers during precipitation events and at the end of the business day, or implementing other similarly effective practices. Minimization of exposure is not required in cases where the exposure to precipitation will not result in a discharge of pollutants; and

f. Describe procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices, and applicable disposal locations of such wastes, to personnel in order to comply with the conditions of this general permit. The operator shall implement the procedures described in the SWPPP.

5. SWPPP requirements for discharges to nutrient and sediment impaired waters. For discharges to surface waters (i) identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or (ii) with an applicable TMDL

wasteload allocation established and approved prior to the term of this general permit for sediment for a sediment-related parameter (i.e., total suspended solids or turbidity) or nutrients (i.e., nitrogen or phosphorus), the operator shall:

a. Identify the impaired waters, approved TMDLs, and pollutants of concern in the SWPPP; and

b. Provide clear direction in the SWPPP that:

(1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

(2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and

(3) A modified inspection schedule shall be implemented in accordance with Part II G 2 a.

6. SWPPP requirements for discharges to polychlorinated biphenyl (PCB) impaired waters. For discharges from construction activities that include the demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, to surface waters (i) identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for PCB, the operator shall:

a. Identify the impaired waters, approved TMDLs, and pollutant of concern in the SWPPP;

b. Implement the approved erosion and sediment control plan in accordance with Part II B 2;

c. Dispose of waste materials in compliance with applicable state, federal, and local requirements; and

d. Implement a modified inspection schedule in accordance with Part II G 2 a.

7. SWPPP requirements for discharges to exceptional waters. For discharges to surface waters identified in 9VAC25-260-30 A 3 c as an exceptional water, the operator shall:

a. Identify the exceptional surface waters in the SWPPP; and

b. Provide clear direction in the SWPPP that:

(1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

(2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and

(3) A modified inspection schedule shall be implemented in accordance with Part II G 2 a.

8. Identification of qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit.

9. Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP.

10. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K.

C. SWPPP amendments, modification, and updates.

1. The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.

2. The SWPPP must be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures must be accomplished as described in Part II H.

3. The SWPPP must clearly identify the contractors that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure.

4. The operator shall update the SWPPP as soon as possible but no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items:

a. A record of dates when:

(1) Major grading activities occur;

(2) Construction activities temporarily or permanently cease on a portion of the site; and

(3) Stabilization measures are initiated;

b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and were modified;

c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;

d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;

e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release;

f. Measures taken to prevent the reoccurrence of any prohibited discharge; and

g. Measures taken to address any evidence identified as a result of an inspection required under Part II G.

5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K.

D. Public Notification. Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity. For linear projects, the operator shall post the notice of coverage letter at a publicly accessible location near an active part of the construction project (e.g., where a pipeline crosses a public road). The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F.

E. SWPPP availability.

1. Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site.

2. The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department, the VSMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site.

3. The operator shall make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP shall be posted and maintained in accordance with Part II D. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly

accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released.

F. SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.

1. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.

2. If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.

G. SWPPP Inspections.

1. Personnel responsible for on-site and off-site inspections. Inspections required by this general permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for insuring that the qualified personnel conduct the inspection.

2. Inspection schedule.

a. For construction activities that discharge to a surface water identified in Part II B 5 and B 6 as impaired or having an approved TMDL or Part II B 7 as exceptional, the following inspection schedule requirements apply:

(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day; and

(2) Representative inspections as authorized in Part II G 2 d shall not be allowed.

b. Except as specified in Part II G 2 a, inspections shall be conducted at a frequency of:

(1) At least once every five business days; or

(2) At least once every 10 business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day.

c. Where areas have been temporarily stabilized or land-disturbing activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency described in Part II G 2 a and 2 b may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

d. Except as prohibited in Part II G 2 a (2), representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that:

(1) Temporary or permanent soil stabilization has been installed and vehicle access may compromise the temporary or permanent soil stabilization and potentially cause additional land disturbance increasing the potential for erosion;

(2) Inspections occur on the same frequency as other construction activities;

(3) Control measures are inspected along the construction site 0.25 miles above and below each access point (i.e., where a roadway, undisturbed right-of-way, or other similar feature intersects the construction activity and access does not compromise temporary or permanent soil stabilization); and

(4) Inspection locations are provided in the report required by Part II G.

e. If adverse weather causes the safety of the inspection personnel to be in jeopardy, the inspection may be delayed until the next business day on which it is safe to perform the inspection. Any time inspections are delayed due to adverse weather conditions, evidence of the adverse weather conditions shall be included in the SWPPP with the dates of occurrence.

3. Inspection requirements.

a. As part of the inspection, the qualified personnel shall:

(1) Record the date and time of the inspection and, when applicable, the date and rainfall amount of the last measurable storm event;

(2) Record the information and a description of any discharges occurring at the time of the inspection or evidence of discharges occurring prior to the inspection;

(3) Record any land-disturbing activities that have occurred outside of the approved erosion and sediment control plan;

(4) Inspect the following for installation in accordance with the approved erosion and sediment control plan, identification of any maintenance needs, and evaluation of effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:

(a) All perimeter erosion and sediment controls, such as silt fence;

(b) Soil stockpiles, when applicable, and borrow areas for stabilization or sediment trapping measures;

(c) Completed earthen structures, such as dams, dikes, ditches, and diversions for stabilization and effective impoundment or flow control;

(d) Cut and fill slopes;

(e) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from stormwater;

(f) Temporary or permanent channels, flumes, or other slope drain structures installed to convey concentrated runoff down cut and fill slopes;

(g) Storm inlets that have been made operational to ensure that sediment laden stormwater does not enter without first being filtered or similarly treated; and

(h) Construction vehicle access routes that intersect or access paved roads for minimizing sediment tracking;

(5) Inspect areas that have reached final grade or that will remain dormant for more than 14 days to ensure:

(a) Initiation of stabilization activities have occurred immediately, as defined in 9VAC25-880-1; and

(b) Stabilization activities have been completed within seven days of reaching grade or stopping work;

(6) Inspect for evidence that the approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications has not been properly implemented. This includes:

- (a) Concentrated flows of stormwater in conveyances such as rills, rivulets or channels that have not been filtered, settled, or similarly treated prior to discharge, or evidence thereof;
 - (b) Sediment laden or turbid flows of stormwater that have not been filtered or settled to remove sediments prior to discharge;
 - (c) Sediment deposition in areas that drain to unprotected stormwater inlets or catch basins that discharge to surface waters. Inlets and catch basins with failing sediments controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected;
 - (d) Sediment deposition on any property (including public and private streets) outside of the construction activity covered by this general permit;
 - (e) Required stabilization has not been initiated or completed or is not effective on portions of the site;
 - (f) Sediment basins without adequate wet or dry storage volume or sediment basins that allow the discharge of stormwater from below the surface of the wet storage portion of the basin;
 - (g) Sediment traps without adequate wet or dry storage or sediment traps that allow the discharge of stormwater from below the surface of the wet storage portion of the trap; and
 - (h) Land disturbance or sediment deposition outside of the approved area to be disturbed;
- (7) Inspect pollutant generating activities identified in the pollution prevention plan for the proper implementation, maintenance and effectiveness of the procedures and practices;
- (8) Identify any pollutant generating activities not identified in the pollution prevention plan; and
- (9) Identify and document the presence of any evidence of the discharge of pollutants prohibited by this general permit.

4. Inspection report. Each inspection report shall include the following items:

- a. The date and time of the inspection and, when applicable, the date and rainfall amount of the last measurable storm event;
- b. Summarized findings of the inspection;
- c. The locations of prohibited discharges;
- d. The locations of control measures that require maintenance;

- e. The locations of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location;
- f. The locations where any evidence identified under Part II G 3 a (6) exists;
- g. The locations where any additional control measure is needed;
- h. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance;
- i. Documentation of any corrective actions required from a previous inspection that have not been implemented; and
- j. The date and signature of the qualified personnel and the operator or its duly authorized representative.

5. The inspection report shall be included into the SWPPP no later than four business days after the inspection is complete.

6. The inspection report and any actions taken in accordance with Part II shall be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated. The inspection report shall identify any incidents of noncompliance. Where an inspection report does not identify any incidents of noncompliance, the report shall contain a certification that the construction activity is in compliance with the SWPPP and this general permit. The report shall be signed in accordance with Part III K of this general permit.

H. Corrective actions.

1. The operator shall implement the corrective actions identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

2. The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by this general permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the VSMP authority and the department as well as obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

PART III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

NOTE: Discharge monitoring is not required for this general permit. If the operator chooses to monitor stormwater discharges or control measures, the operator shall comply with the requirements of subsections A, B, and C, as appropriate.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this general permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).
3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Monitoring records and reports shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individuals who performed the sampling or measurements;
 - c. The dates and times analyses were performed;
 - d. The individuals who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this general permit, and records of all data used to complete the registration statement for this general permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

C. Reporting monitoring results.

1. The operator shall update the SWPPP to include the results of the monitoring as may be performed in accordance with this general permit, unless another reporting schedule is specified elsewhere in this general permit.
2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms provided, approved or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.
3. If the operator monitors any pollutant specifically addressed by this general permit more frequently than required by this general permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this general permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this general permit.

D. Duty to provide information. The operator shall furnish, within a reasonable time, any information which the board may request to determine whether cause exists for terminating this general permit or to determine compliance with this general permit. The board, department, EPA, or VSMP authority may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and the Virginia Stormwater Management Act. The operator shall also furnish to the board, department, EPA, or VSMP authority, upon request, copies of records required to be kept by this general permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this general permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized stormwater discharges. Pursuant to § 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the department, it shall be unlawful to cause a stormwater discharge from a construction activity.

G. Reports of unauthorized discharges. Any operator who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1-44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters or who discharges or causes or allows a discharge that may

reasonably be expected to enter surface waters, shall notify the Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department and the VSMP authority within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this general permit.

Discharges reportable to the department and the VSMP authority under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or "upset," as defined in this general permit, should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department and the VSMP authority by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department and the VSMP authority within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service of some or all of the facilities; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The operator shall report any noncompliance which may adversely affect surface waters or may endanger public health.

1. An oral report to the department and the VSMP authority shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
- b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The department may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on surface waters has been reported.

3. The operator shall report all instances of noncompliance not reported under Part III I 1 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in Part III I 2.

NOTE: The reports required in Part III G, H and I shall be made to the department and the VSMP authority. Reports may be made by telephone, email, or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registration statement, to the department or the VSMP authority, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the department and the VSMP authority as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required only when:

- a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in 9VAC25-870-420;

b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this general permit; or

2. The operator shall give advance notice to the department and VSMP authority of any planned changes in the permitted facility or activity, which may result in noncompliance with state permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this chapter, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this chapter, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports and other information. All reports required by this general permit, including SWPPPs, and other information requested by the board or the department shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall

responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The signed and dated written authorization is included in the SWPPP. A copy must be provided to the department and VSMP authority, if requested.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the VSMP authority as the administering entity for the board prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The operator shall comply with all conditions of this general permit. Any state permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this general permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for state permit coverage, termination, revocation and reissuance, or modification; or denial of a state permit renewal application.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this general permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the operator wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the operator shall submit a new registration statement at least 60 days before the expiration date of the existing general permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing general permit.

N. Effect of a state permit. This general permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this general permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in general permit conditions on "bypassing" (Part III U) and "upset" (Part III V), nothing in this general permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

Q. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the operator to achieve compliance with the conditions of this general permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this general permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters and in compliance with all applicable state and federal laws and regulations.

S. Duty to mitigate. The operator shall take all steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this general permit.

U. Bypass.

1. "Bypass," as defined in 9VAC25-870-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is

for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

- a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the operator shall submit prior notice to the department, if possible at least 10 days before the date of the bypass.
- b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

- a. Except as provided in Part III U 1, bypass is prohibited, and the board or department may take enforcement action against an operator for bypass unless:
 - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
 - (3) The operator submitted notices as required under Part III U 2.
- b. The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

- 1. An "upset," as defined in 9VAC25-870-10, means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- 2. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based state permit effluent limitations if the requirements of Part III

V 4 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

4. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

- a. An upset occurred and that the operator can identify the cause(s) of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The operator submitted notice of the upset as required in Part III I; and
- d. The operator complied with any remedial measures required under Part III S.

5. In any enforcement proceeding, the operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The operator shall allow the department as the board's designee, the VSMP authority, EPA, or an authorized representative of either entity (including an authorized contractor), upon presentation of credentials and other documents as may be required by law to:

1. Enter upon the operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this general permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this general permit;
3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring state permit compliance or as otherwise authorized by the Clean Water Act or the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. State permit actions. State permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a state permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any state permit condition.

Y. Transfer of state permits.

1. State permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Part III Y 1, this state permit may be automatically transferred to a new operator if:

a. The current operator notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of state permit responsibility, coverage, and liability between them; and

c. The department does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

Z. Severability. The provisions of this general permit are severable, and if any provision of this general permit or the application of any provision of this state permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this general permit shall not be affected thereby.

9VAC25-880-100. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.